



January 7, 2014

**CITY COUNCIL AGENDA**

6:00 p.m.

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1. **CALL TO ORDER**  
Invocation/Pledge of Allegiance  
  
**Election of Mayor Pro Tempore**  
  
**HONORS AND RECOGNITIONS**  
Councilmember Danny Paggao - 20 years of service
2. **APPROVAL OF AGENDA**
3. **CITIZEN COMMENT PERIOD**
4. **CONSENT AGENDA**
  - a. Minutes of the Regular City Council meeting held December 17, 2013
  - b. Approval of Accounts Payable Vouchers
  - c. Motion to authorize the Mayor to sign the agreement with AA Sports LTD for marathon timing support as outlined in the Scope of Work in the amount of \$10,560.00
  - d. Motion to confirm the Mayor's appointment of Otto Haffner to the Youth Commission for a three year term to expire January 2017
  - e. Motion to authorize the Mayor to sign the Interlocal Agreement with Whatcom County Sheriff's Office for Mini-Chain Use
  - f. Motion to authorize the Engineering Department to advertise for consultants for professional engineering services for the Lyszak Outfall Project
5. **STAFF, MAYOR AND COUNCIL COMMENTS**
  - a. City Administrator
  - b. Mayor
  - c. Councilmembers



January 7, 2014

**CITY COUNCIL AGENDA**

6:00 p.m.

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**6. ORDINANCE AND RESOLUTIONS**

- a. Resolution 14-03: Lodging Tax Grant Awards for 2014
- b. Resolution 14-02: Providing a Market Rate Salary Adjustment to Certain Non-Represented Classifications

**7. PUBLIC HEARINGS/PUBLIC MEETINGS**

- a. Motion to approve a Nightclub License for the Hookah Lounge Subject to Conditions of Approval (Quasi-Judicial Hearing)
- b. Ordinance 1657: Relating to the Binding Site Plan (Public Hearing)
- c. Resolution 14-01: Declaring Surplus and Authorizing Disposal of Refuse Trucks (Public Hearing)
- d. Ordinance 1681: Relating to Recreational Camping in City Parks and Amending Sections 6.14.010, 6.14.020, 6.13.025, 6.13.090 and 6.13.100 of the OHMC (Public Hearing)

**8. UNFINISHED BUSINESS**

**9. NEW BUSINESS**

- a. Motion to set regular workshop meetings

**10. ADJOURNMENT**

As a courtesy to Council and the audience, PLEASE TURN YOUR CELL PHONES OFF before the meeting begins. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda.

For scheduled public hearings, if you wish to speak, please sign your name to the sign-up sheet, located in the Council Chambers. The Council will take all information under advisement. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak.

Thank you for participating in your City Government!

To assure disabled persons the opportunity to participate in or benefit from City services, please provide 24-hour advance notice to the City Clerk at (360) 279-4539 for additional arrangements to reasonably accommodate special needs.

City of Oak Harbor  
City Council Agenda Bill

Bill No.: \_\_\_\_\_  
Date: January 7, 2014  
Subject: Selection of Mayor Pro  
Tempore

FROM:  Larry Cort, City Administrator

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

The purpose of this agenda bill is for the Council to select a Mayor Pro Tempore for the next two years.

**SUMMARY STATEMENT**

Traditionally, the City Council has selected a Mayor Pro Tempore at the first meeting of even numbered years.

**FISCAL IMPACT**

None.

**RECOMMENDED ACTION**

Consider nominations from City Councilmembers and by majority vote, select a Mayor Pro Tempore for 2014 through 2015.

Oak Harbor City Council  
Regular Meeting Minutes  
December 17, 2013

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**CALL TO ORDER**

Mayor Scott Dudley called the meeting to order at 6:00 p.m.

**INVOCATION/PLEDGE OF ALLEGIANCE**

Chaplain David Lura, CREDO Detachment Whidbey Island and Navy League Chaplain, gave the Invocation, and Mayor Dudley led the Pledge of Allegiance.

**OATH OF OFFICE**

City Clerk Valerie J. Loffler administered the Oath of Office to Councilmembers Jim Campbell, Bob Severns, Danny Paggao, and Joel Servatius.

**ROLL CALL**

Present:

Mayor Scott Dudley  
Mayor Pro Tempore Danny Paggao  
Councilmember Rick Almberg  
Councilmember Jim Campbell  
Councilmember Tara Hizon  
Councilmember Bob Severns  
Councilmember Joel Servatius

Staff Present:

City Administrator Larry Cort  
Finance Director Doug Merriman  
Development Service Director Steve Powers  
Public Works Director Cathy Rosen  
City Attorney Grant Weed  
City Engineer Joe Stowell  
City Clerk Valerie J. Loffler  
Fire Chief Ray Merrill  
Police Chief Ed Green

Councilmember Beth Munns was excused.

**HONORS AND RECOGNITIONS**

Ed McNeill 30 Years of Service Recognition

Public Works Director Cathy Rosen recognized Ed McNeill for his 30 years of dedicated service to the City of Oak Harbor and presented him with a fleece jacket embroidered with the City logo. Mr. McNeill also received a thirty-year pin in recognition. Mrs. Rosen stated that Mr. McNeill leads by example and is a tremendous steward of the City's resources.

Mayor Dudley announced a short recess to allow Councilmembers to personally thank Mr. McNeill for his 30 years of service.

**APPROVAL OF AGENDA**

**Motion:** Councilmember Campbell moved to approve the agenda as presented. The motion was seconded by Councilmember Almberg and carried unanimously.

## CONSENT AGENDA

- a. Minutes of the Regular City Council meeting held December 3, 2013
- b. Approval of Accounts Payable Voucher Nos. 156414 through 156423 in the amount of \$1,281.06; Voucher Nos. 156424 through 156586 in the amount of \$379,344.09; and Voucher Nos. 156587 through 156593 in the amount of \$359.68
- c. Motion to authorize the Mayor to sign a Professional Services Agreement with OAC for project delivery advisory services associated with design and construction of the wastewater treatment plant in the not-to-exceed contract amount of \$55,480.00
- d. Ordinance 1680: Establishing Committed Revenue Classifications Required by Governmental Accounting Standards Board (GASB) Statement No. 54 for Financial Reporting Purposes
- e. Resolution 13-38: Designating the Depository Institutions for the City's Business per Oak Harbor Municipal Code 3.02.010
- f. Motion to reject all bids received on November 14, 2013, for two automated refuse trucks
- g. Motion to authorize the use of the "piggyback" statute per RCW 39.34 to purchase two Peterbilt/Wayne automated refuse trucks from the City of Tacoma's bid in the amount of \$513,288.02
- h. Motion to authorize the Mayor to sign the Interagency Agreement with the State Department of Enterprise Services for Energy Conservation Project Management and Monitoring Services

**Motion:** Councilmember Hizon moved to adopt the consent agenda as presented. The motion was seconded by Councilmember Campbell and carried unanimously.

## STAFF AND COUNCIL COMMENTS

City Administrator Dr. Larry Cort stated there's an extra week between council meetings and the next meeting will be January 7, 2014.

Dr. Cort also reported City Hall would be closed on Christmas Day and New Years Day. In addition, he commended city staff for providing 44 bags filled with Christmas gifts for Tree of Hope children.

Dr. Cort announced City Clerk Valerie Loffler accepted a position with Snohomish County. Councilmembers thanked her for her contributions.

Councilmembers wished everyone a Merry Christmas.

## ORDINANCES AND RESOLUTIONS

Ordinance 1679: Relating to Standing Committees

City Administrator Dr. Larry Cort provided a staff report.

Councilmembers spoke in support of maintaining the current workshop format, and also discussed changing the starting time to 2:00 p.m. instead of 3:00 p.m. to allow more time between the workshop meeting and the regular meeting.

**Ordinance 1679 Relating to Standing Committees and Repealing Section 1.04.015 of the Oak Harbor Municipal Code**

**Motion:** Councilmember Servatius moved to adopt Ordinance 1679. The motion was seconded by Councilmember Almberg and carried unanimously.

**Motion:** Councilmember Campbell moved to approve revisions to the Council Rules of Procedure to Eliminate Rule 27 and 28 relating to Standing Committees. The motion was seconded by Councilmember Severns and carried unanimously.

Ordinance 1677: Amending the 2013-14 Biennial Budget  
Finance Director Doug Merriman provided the staff report.

Councilmember Almberg asked if the budget adjustment had any impact on the stabilization fund, and Mr. Merriman responded that it did not.

**Ordinance 1677 Amending the 2013-14 Biennial Budget for Final Required Increases in FY2013 Appropriation Authority**

**Motion:** Councilmember Hizon moved to adopt Ordinance 1677. The motion was seconded by Councilmember Campbell and carried unanimously.

Ordinance 1682: Relating to Contracting and Amending Sections 2.310.010 and 2.330.010  
City Engineer Joe Stowell provided the staff report.

**Ordinance 1682 An Ordinance of the City of Oak Harbor, Washington, Relating to Contracting and Amending Section 2.310.010 Entitled "Purchase and Bidding – General Provisions," and Section 2.330.010 Entitled "Public Works," of the Oak Harbor Municipal Code**

**Motion:** Councilmember Servatius moved to adopt Ordinance 1682. The motion was seconded by Councilmember Almberg and carried unanimously.

Resolution 13-37: Adopting the Comprehensive Emergency Management Plan  
Fire Chief Ray Merrill provided the staff report. He also thanked Angela Braunstein for her diligence and expertise preparing the document.

Councilmembers spoke in support.

Councilmember Severns asked for clarification on the review schedule.

**Resolution 13-37 Adopting the Revised Comprehensive Emergency Management Plan (CEMP)**

**Motion:** Councilmember Hizon moved to adopt Resolution 13-37. The motion was seconded by Councilmember Servatius and carried unanimously.

Retainer Agreement with Weed, Graafstra and Benson, Inc.  
City Administrator Dr. Larry Cort provided the staff report.

Grant Weed discussed the circumstances relating to the rate increase.

Councilmembers Hizon, Almberg, Paggao and Campbell spoke in support.

Councilmember Servatius spoke in opposition stating he would support the retainer agreement with the current rate structure.

Councilmember Almberg asked if the proposal was “take it or leave it?”

City Attorney Grant Weed responded that in fairness to the other seven cities that have been clients longer than the City of Oak Harbor, the firm can’t give one city a better deal than the others. They can’t justify it from an ethical and business standpoint.

**Motion:** Councilmember Hizon moved, seconded by Councilmember Campbell, to authorize the Mayor to sign the Retainer Agreement with Weed, Graafstra and Benson, Inc. for January 1, 2014 and ending June 30, 2014.

Councilmember Severns noted that the firm has operated under market since 2010.

The motion carried 6 to 1; Servatius opposed.

### EXECUTIVE SESSION

At 6:47 p.m. Mayor Dudley announced a 90-minute executive session to discuss pending litigation and property acquisition.

At 8:15 p.m. Mayor Dudley announced another 30 minutes would be necessary.

At 8:45 p.m. Mayor Dudley announced another 15 minutes would be necessary.

The meeting reconvened at 9:01 p.m.

**Motion:** Councilmember Servatius moved to suspend the rules and extend the meeting to 9:15 p.m. The motion was seconded by Councilmember Campbell and carried unanimously.

**Motion:** Councilmember Severns moved to authorize the Mayor to sign an expanded scope of work for Ogden Murphy Wallace on the terms of their letter dated 12/13/13. The motion was seconded by Councilmember Hizon and carried unanimously.

**Motion:** Councilmember Servatius moved to authorize the Mayor to sign the Purchase and Sale Agreement with Whidbey Island Bank for property located at 3231 SE Pioneer Way. The motion was seconded by Councilmember Almberg and carried unanimously.

Councilmember Severns abstained because he owns property in the vicinity.

**Motion:** Councilmember Servatius moved to authorize the Mayor to sign Amendment No. 1 to the Professional Services Agreement with Equinox Research Consulting International for Archaeological Services related to the new wastewater treatment plant in the amount of \$198,520 increasing the total contract amount from \$16,322.98 to \$214,852.98. The motion was seconded by Councilmember Campbell and carried unanimously.

Councilmember Severns abstained because he owns property in the vicinity.

## **ADJOURNMENT**

**Motion:** Councilmember Servatius moved, seconded by Councilmember Severns, to adjourn the meeting. The motion carried unanimously.

The meeting adjourned at 9:05 p.m.

Valerie J. Loffler, City Clerk

City of Oak Harbor  
City Council Agenda Bill

Bill No. C/A 4.b.

Date: January 7, 2014

Subject: Approval of Accounts Payable  
Vouchers

FROM: Doug Merriman, Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**SUMMARY STATEMENT**

Oak Harbor Municipal Code Chapter 3.72 establishes procedures for claims (vouchers) payment. The documentation that regularly supports the signature coversheets is attached. Claim coversheets will be provided prior to the City Council meeting for appropriate Council signatures.

**RECOMMENDED ACTION**

I move to approve Accounts Payable Voucher Nos. 156594 through 156601 in the amount of \$588.52, and Voucher Nos. 156602 through 156752 in the amount of \$764,416.46.

**ATTACHMENTS**

Voucher Lists

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount	
156594	12/17/2013	0006885 HIGGINS, SEAN OR THELMA	Ref000210734		UB Refund Cst #00126417	134.88	
						<b>Total :</b>	<b>134.88</b>
156595	12/17/2013	0001494 HOMES FOR RENT	Ref000210732		UB Refund Cst #00124951	7.63	
						<b>Total :</b>	<b>7.63</b>
156596	12/17/2013	0007307 LONG, LLOYD L	Ref000210733		UB Refund Cst #00126170	15.62	
						<b>Total :</b>	<b>15.62</b>
156597	12/17/2013	0006679 POPE, MATTHEW T	Ref000210730		UB Refund Cst #00124195	4.06	
						<b>Total :</b>	<b>4.06</b>
156598	12/17/2013	0007308 TIGER CONSTRUCTION	Ref000210736		UB Refund Cst #00160450	109.09	
						<b>Total :</b>	<b>109.09</b>
156599	12/17/2013	0007309 VANHORN, ROBERT	Ref000210737 Ref000210738		UB Refund Cst #00162594 UB Refund Cst #00162594	18.64 105.50	
						<b>Total :</b>	<b>124.14</b>
156600	12/17/2013	0000973 WALDRON CONSTRUCTION	Ref000210739 Ref000210740		UB Refund Cst #00163315 UB Refund Cst #00163318	92.07 94.17	
						<b>Total :</b>	<b>186.24</b>
156601	12/17/2013	0001391 WINDERMERE	Ref000210731 Ref000210735		UB Refund Cst #00124677 UB Refund Cst #00149186	1.52 5.34	
						<b>Total :</b>	<b>6.86</b>
<b>8 Vouchers for bank code : bank</b>						<b>Bank total :</b>	<b>588.52</b>
<b>8 Vouchers in this report</b>						<b>Total vouchers :</b>	<b>588.52</b>

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156602	12/17/2013	0004903 US BANK	4485590001840921		CREDIT CARD PURCHASES	871.46
					<b>Total :</b>	<b>871.46</b>
156603	12/18/2013	0001563 CHICAGO TITLE COMPANY	121813		DEPOSIT/ESCROW #245362997	25,000.00
					<b>Total :</b>	<b>25,000.00</b>
156604	12/20/2013	0000960 REVENUE, WASHINGTON STATE DEPT OF	121213		NOV 2013/SALES USE TAX	45,557.84
					<b>Total :</b>	<b>45,557.84</b>
156605	12/24/2013	0001756 INTERNATIONAL MUNICIPAL SIGNAL	100113		MEMBERSHIP RENEWAL/JAMESON	40.00
					<b>Total :</b>	<b>40.00</b>
156606	12/24/2013	0001756 INTERNATIONAL MUNICIPAL SIGNAL	100113A		MEMBERSHIP RENEWAL/WILLIAMS	40.00
					<b>Total :</b>	<b>40.00</b>
156607	12/31/2013	0000950 LICENSING, WASHINGTON STATE DEPT OF	121913		CONCEALED WEAPONS PERMITS	306.00
					<b>Total :</b>	<b>306.00</b>
156608	12/31/2013	0006333 AC/DC ELECTRIC	213105		OUTLET INSTALLATION	146.75
					<b>Total :</b>	<b>146.75</b>
156609	12/31/2013	0000028 ALL ISLAND LOCK & KEY	22968		LOCK REPAIR	48.91
					<b>Total :</b>	<b>48.91</b>
156610	12/31/2013	0000029 ALL PHASE ELECTRIC SUPPLY	0952-676709		LAMP	24.98
					<b>Total :</b>	<b>24.98</b>
156611	12/31/2013	0007320 ALLIED 100	344042		INSTRUCTOR PACKAGE	120.00
					<b>Total :</b>	<b>120.00</b>
156612	12/31/2013	0006551 ALPINE FIRE & SAFETY SYSTEMS	589790		SEALS/PULL PINS	63.84
					<b>Total :</b>	<b>63.84</b>
156613	12/31/2013	0000034 AMERICAN PLANNING ASSOCIATION	152734-13106		MEMBERSHIP/SPOO	429.00
					<b>Total :</b>	<b>429.00</b>
156614	12/31/2013	0000034 AMERICAN PLANNING ASSOCIATION	4238		WEBSITE JOB LISTING/ASSOCIATE PL/	50.00

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156614	12/31/2013	0000034	0000034 AMERICAN PLANNING ASSOCIATION		(Continued)	<b>Total : 50.00</b>
156615	12/31/2013	0000042	ANACORTES, CITY OF		900-9080-00 OCT 2013/WATER PURCHASED	93,630.00
					901-9080-01 OCT 2013/WATER PURCHASED	1,077.90
					901-9080-02 OCT 2013/WATER PURCHASED	9,933.74
					<b>Total :</b>	<b>104,641.64</b>
156616	12/31/2013	0002044	ANACORTES.NET/HOW IT WORKS		34152 DEC 2013/WEB HOSTING	75.00
					34195 DEC 2013/WEB HOSTING	15.95
					<b>Total :</b>	<b>90.95</b>
156617	12/31/2013	0005550	ARCHITECTURAL ELEMENTS		2013-12-11 ALUMINUM SIGN	5,351.30
					<b>Total :</b>	<b>5,351.30</b>
156618	12/31/2013	0006865	ARMADA		111213 COLLECTION FEE/2651495	66.90
					<b>Total :</b>	<b>66.90</b>
156619	12/31/2013	0004019	ASSOCIATED PETROLEUM PRODUCTS		0506950-IN FUEL	34,696.84
					<b>Total :</b>	<b>34,696.84</b>
156620	12/31/2013	0000055	ASSOCIATION OF WASHINGTON		1062-42153 REGISTRATION/SERVATIUS	25.00
					<b>Total :</b>	<b>25.00</b>
156621	12/31/2013	0000159	AT&T MOBILITY		287249477751X1224201 AIRCARDS	462.01
					<b>Total :</b>	<b>462.01</b>
156622	12/31/2013	0000065	AVOCET ENVIRONMENTAL TESTING		1304230-IN TESTING SERVICES	112.00
					<b>Total :</b>	<b>112.00</b>
156623	12/31/2013	0000068	BANKERS ADVERTISING COMPANY		623552 BAG CLIPS	695.90
					<b>Total :</b>	<b>695.90</b>
156624	12/31/2013	0003980	BHC CONSULTANTS		0005495 PROF SVC/SEPTIC TO SEWERS	5,898.27
					<b>Total :</b>	<b>5,898.27</b>
156625	12/31/2013	0000098	BIDDLE, KYLE		TRAVEL REIMB TRAVEL REIMB	23.52
					<b>Total :</b>	<b>23.52</b>

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156626	12/31/2013	0000109 BLUMENTHAL UNIFORMS	37626		UNIFORM ITEMS/RANG	788.53
			38152		CLOTH EMBLEM/MASSEY	8.64
			39201		SHIRT/RANG	156.35
			39503		BOOTS/SLOWIK	330.39
					<b>Total :</b>	<b>1,283.91</b>
156627	12/31/2013	0001558 BOUND TREE MEDICAL, LLC	81273321		DEFIBRILLATOR PADS/GLOVES/INSTA-	398.62
					<b>Total :</b>	<b>398.62</b>
156628	12/31/2013	0006769 BRAUN CONSULTING GROUP	1694		NOV 2013/RETAINER	2,650.00
					<b>Total :</b>	<b>2,650.00</b>
156629	12/31/2013	0000962 BUILDING OFFICIALS, WASHINGTON ASSOC	121013		ACCREDITED CODE OFFICIAL PROGR/	50.00
					<b>Total :</b>	<b>50.00</b>
156630	12/31/2013	0000627 CAPITAL ONE COMMERCIAL	142577275211		SUPPLIES	276.82
			183928275211		SUPPLIES	415.10
					<b>Total :</b>	<b>691.92</b>
156631	12/31/2013	0006215 CAROLLO	0132275		PROF SVC/WASTEWATER TREATMENT	104,394.59
					<b>Total :</b>	<b>104,394.59</b>
156632	12/31/2013	0000150 CASCADE NATURAL GAS	08793000004		NATURAL GAS/POLICE STATION	505.65
			18583000007		NATURAL GAS/TREATMENT PLANT	10.00
			36624000000		NATURAL GAS/FIRE STATION	1,486.22
			40661045647		NATURAL GAS/ANIMAL SHELTER	271.42
			58793000009		NATURAL GAS/CITY HALL	740.06
			80434000008		NATURAL GAS/CITY SHOP	2,133.08
			82130000005		NATURAL GAS/ANNEX	91.41
			90134000000		NATURAL GAS/ADULT CARE CENTER	191.62
					<b>Total :</b>	<b>5,429.46</b>
156633	12/31/2013	0007310 CERTIFIED SALES AND SERVICE	121013		DUMPSTER DEPOSIT REFUND	944.58
					<b>Total :</b>	<b>944.58</b>
156634	12/31/2013	0000172 CHRISTIANS TOWING STORAGE	26656		RUNABOUT BOAT DISPOSAL	101.00
					<b>Total :</b>	<b>101.00</b>

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156635	12/31/2013	0000179	CLERKS PETTY CASH	122413	PETTY CASH	14.00
<b>Total :</b>						<b>14.00</b>
156636	12/31/2013	0005773	COMCAST	8498300270032002	CABLE	119.91
				8498300270032002	CABLE	111.47
				8498300271046803	INTERNET	409.97
				8498300290363841	INTERNET	210.77
<b>Total :</b>						<b>852.12</b>
156637	12/31/2013	0002772	COOK, BILLIE	1	TRAVEL REFUND	10.00
<b>Total :</b>						<b>10.00</b>
156638	12/31/2013	0000201	CORAL SALES COMPANY	INV-B051594	TRAFFIC COUNTER	6,956.80
<b>Total :</b>						<b>6,956.80</b>
156639	12/31/2013	0001920	CORRECTIONS, WASHINGTON STATE DEPT	45-105496	SIGN	160.42
<b>Total :</b>						<b>160.42</b>
156640	12/31/2013	0000222	CUSTOM ENGRAVING	13-1518	ACCOUNTABILITY TAGS/NAME PLATES	390.50
<b>Total :</b>						<b>390.50</b>
156641	12/31/2013	0007312	DAVIS, ANNIE	1	TRAVEL REFUND	10.00
<b>Total :</b>						<b>10.00</b>
156642	12/31/2013	0000256	DAY WIRELESS SYSTEMS	345237	RADIO REPAIR	404.29
				347828	RADIO REPAIR	125.01
<b>Total :</b>						<b>529.30</b>
156643	12/31/2013	0001099	DISPLAY SALES COMPANY	INV0094229	BANDING STRAP	89.00
<b>Total :</b>						<b>89.00</b>
156644	12/31/2013	0000175	DUNN-TERRY, ROXANN	EXP REIMB	EXP REIMB	1,144.00
<b>Total :</b>						<b>1,144.00</b>
156645	12/31/2013	0000257	DUTCH MAID CLEANERS	123113	DEC 2013/LAUNDRY SERVICES	295.86
<b>Total :</b>						<b>295.86</b>
156646	12/31/2013	0000967	ECOLOGY, WASHINGTON STATE DEPT OF	2014-WAR045554	STORMWATER PERMIT	3,145.34

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156646	12/31/2013	0000967	0000967 ECOLOGY, WASHINGTON STATE DEPT	(Continued)		<b>Total : 3,145.34</b>
156647	12/31/2013	0000273	EDGE ANALYTICAL, INC	13-23241	TESTING	300.00
				13-23436	TESTING	18.00
					<b>Total :</b>	<b>318.00</b>
156648	12/31/2013	0006747	EQUINOX RESEARCH & CONSULTING	12-442-5	PROF SVC/ARCHAEOLOGIST	2,737.00
				13-452	PROF SVC/TRANSMISSION LINE	29,635.18
				13-475-2	PROF SVC/WWTP	4,059.51
					<b>Total :</b>	<b>36,431.69</b>
156649	12/31/2013	0001582	EVERGREEN PACIFIC PUBLISHING	4812	TIDE GUIDE	81.79
					<b>Total :</b>	<b>81.79</b>
156650	12/31/2013	0006276	EXPRESS SERVICES, INC	13355370-1	OFFICE SERVICE SUPPORT	1,273.20
				13392564-4	OFFICE SERVICE SUPPORT	572.94
				13419057-8	OFFICE SERVICE SUPPORT	1,241.37
					<b>Total :</b>	<b>3,087.51</b>
156651	12/31/2013	0000954	FIRE CHIEFS, WASHINGTON STATE ASSOC ( 09-7054		REGISTRATION/MERRILL	175.00
					<b>Total :</b>	<b>175.00</b>
156652	12/31/2013	0007141	FREEDOM PROPERTIES, LLC	123113	DEC 2013/ANIMAL SHELTER	2,500.00
				501308	PROPERTY TAX REIMBURSEMENT/ANI	605.32
					<b>Total :</b>	<b>3,105.32</b>
156653	12/31/2013	0000355	FRONTIER	007-9244	CURRENT PHONE CHARGES	239.74
				279-0841	CURRENT PHONE CHARGES	71.72
				279-1060	CURRENT PHONE CHARGES	56.89
				675-1572	CURRENT PHONE CHARGES	62.07
				675-1669	CURRENT PHONE CHARGES	56.74
				675-2111	CURRENT PHONE CHARGES	62.51
				675-3121	CURRENT PHONE CHARGES	56.74
				675-5190	CURRENT PHONE CHARGES	38.03
				675-6794	CURRENT PHONE CHARGES	57.18
				679-2530	CURRENT PHONE CHARGES	56.74
				679-5551	CURRENT PHONE CHARGES	182.71
				679-8702	CURRENT PHONE CHARGES	97.09

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156653	12/31/2013	0000355 FRONTIER	(Continued) 770-2694 770-2715		CURRENT PHONE CHARGES CURRENT PHONE CHARGES	40.11 31.50
<b>Total :</b>						<b>1,109.77</b>
156654	12/31/2013	0004088 FULLER, MARY	1 1A		TRAVEL REFUND TRAVEL REFUND	30.00 10.00
<b>Total :</b>						<b>40.00</b>
156655	12/31/2013	0000329 GALLS	001297210		ENGRAVING	83.49
<b>Total :</b>						<b>83.49</b>
156656	12/31/2013	0001706 GARDNER, PAT	EXP REIMB EXP REIMB		EXP REIMB EXP REIMB	672.00 352.00
<b>Total :</b>						<b>1,024.00</b>
156657	12/31/2013	0000330 GARDNER, TERI	EXP REIMB		EXP REIMB	86.91
<b>Total :</b>						<b>86.91</b>
156658	12/31/2013	0000349 GRAINGER	9302844049		CONVEX MIRROR	82.01
<b>Total :</b>						<b>82.01</b>
156659	12/31/2013	0005071 GRAVEL, JENNIFER	EXP REIMB		EXP REIMB	149.99
<b>Total :</b>						<b>149.99</b>
156660	12/31/2013	0002940 GRAY & OSBORNE, INC	13404.00-12 13518.00-5		PROF SVC/WATER SYSTEM PLAN UPD PROF SVC/WATER SYSTEM IMPROVEM	294.40 55,571.06
<b>Total :</b>						<b>55,865.46</b>
156661	12/31/2013	0000345 GREATER OAK HBR CHAMBER OF COM	030149 030150		2% GRANT DEC 2013/TOURIST PROMOTION	895.00 6,000.00
<b>Total :</b>						<b>6,895.00</b>
156662	12/31/2013	0002747 GUARDIAN SECURITY	474619 474620		ALARM TESTING ALARM TESTING	110.00 110.00
<b>Total :</b>						<b>220.00</b>
156663	12/31/2013	0000323 HD FOWLER COMPANY	I3533996		FLANGE/GASKETS/BOLTS	60.91

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156663	12/31/2013	0000323 0000323 HD FOWLER COMPANY			(Continued)	<b>Total : 60.91</b>
156664	12/31/2013	0005515 HDR ENGINEERING, INC	00404005-H		PROF SVC/UTILITY RATE AND FEE UPL	2,330.87
						<b>Total : 2,330.87</b>
156665	12/31/2013	0007314 HENNESSEY, PEGGY	1		TRAVEL REFUND	30.00
						<b>Total : 30.00</b>
156666	12/31/2013	0003095 HOME DEPOT CREDIT SERVICES	1026905 1045309 2051274 27015 27069 4021158 4084373 4592412 4592474 4970319 5020828 5163341 5565204 5572923 7014514 7027946 7580197 7590521 8020073 8105624 8560513 8566293 9027406		DRNOPN10MNHHC/30SEC RTU WR GFCI/LIQUID TAPE/COVER/TERMIN STRIP CAMPER TAPE/7/16 OSB GFCI/1G DEC IV/OUTLET/YELWINGCON TRASHCAN/2X6-10 CONST 4'1LT8STRIP 6PCECONCOV/10PKTRAYLNRS/12X15 EYEWEAR/TAPE/RESPIRATOR/MICROV JB250DFWW 7/16 OSB REPAIR KIT 8 FG STEP AIO EL WH/NS10 PLC9WPL-S PUSHBROOMS/PIPE/TEMPEST II/DUCT FILTERS LADDER HGR 230 GRAY/GUN#67D HOLIDAY TMCEREXD1 3/8X3GALNIPL/1/2X3/8BSHG BAYNEEMRTU	14.40 79.48 24.91 16.65 39.36 129.08 -24.91 70.64 264.66 443.51 97.50 10.07 102.19 110.32 21.61 124.66 78.23 5.84 62.97 1,486.19 1.30 13.71 9.75
						<b>Total : 3,182.12</b>
156667	12/31/2013	0005250 HONEYMOON BAY COFFEE ROASTERS	019330		COFFEE SUPPLIES	93.22
						<b>Total : 93.22</b>
156668	12/31/2013	0005872 IMPAIRED DRIVING IMPACT PANEL	120513		DEC 2013/DUI/UNDERAGE DRINKING P	166.67

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156668	12/31/2013	0005872	0005872 IMPAIRED DRIVING IMPACT PANEL	(Continued)		<b>Total : 166.67</b>
156669	12/31/2013	0000410	ISLAND COUNTY SOLID WASTE		DISPOSAL CHARGES	461.88
					DISPOSAL CHARGES	1,099.00
					<b>Total :</b>	<b>1,560.88</b>
156670	12/31/2013	0000411	ISLAND COUNTY TREASURER	20	4TH QTR 2013/MUNICIPAL COURT REN	4,300.00
					<b>Total :</b>	<b>4,300.00</b>
156671	12/31/2013	0000415	ISLAND DISPOSAL		NOV 2013/COLLECTION CHARGES	7,743.05
					RECYCLING	43.00
					COLLECTION CHARGES	25.60
					<b>Total :</b>	<b>7,811.65</b>
156672	12/31/2013	0000433	ISLAND DRUG	114507150024	INMATE MEDS	19.26
					<b>Total :</b>	<b>19.26</b>
156673	12/31/2013	0000441	ISLAND SYSTEMS		WATER/MARINA	5.90
					WATER/MARINA	5.90
					<b>Total :</b>	<b>11.80</b>
156674	12/31/2013	0006676	J&K ASSOCIATES	1465	HYDROMETER	194.30
					<b>Total :</b>	<b>194.30</b>
156675	12/31/2013	0007313	JASIS, GENEVIEVE	1	TRAVEL REFUND	30.00
					<b>Total :</b>	<b>30.00</b>
156676	12/31/2013	0006362	KBA, INC	3001456	PROF SVC/OAK HARBOR NORTH RESE	20,897.07
					<b>Total :</b>	<b>20,897.07</b>
156677	12/31/2013	0007311	KIM, STEVE	121213	TRAVEL REFUND	60.00
					<b>Total :</b>	<b>60.00</b>
156678	12/31/2013	0000487	KROESEN'S INC	16885	SHIRTS/SWEATER	98.74
					<b>Total :</b>	<b>98.74</b>
156679	12/31/2013	0002227	LABORATORY CORPORATION OF	42836930	TESTING/RANG	31.75

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156679	12/31/2013	0002227 0002227 LABORATORY CORPORATION OF	(Continued)			<b>Total : 31.75</b>
156680	12/31/2013	0000494 LAKESIDE INDUSTRIES	5033489MB		ASPHALT	489.62
						<b>Total : 489.62</b>
156681	12/31/2013	0000889 LANGUAGE EXCHANGE	21		MUNICIPAL COURT INTERPRETER	455.00
						<b>Total : 455.00</b>
156682	12/31/2013	0006392 LAWLER, RONALD	EXP REIMB		EXP REIMB	125.00
						<b>Total : 125.00</b>
156683	12/31/2013	0004502 LEXISNEXIS RISK DATA MANAGE	1404645-20131130		NOV 2013/MINIMUM COMMITMENT	54.35
						<b>Total : 54.35</b>
156684	12/31/2013	0000522 LUEHR, TOM	1		DRIVING SERVICES	135.00
			1		DRIVING SERVICES	102.00
			1		DRIVING SERVICES	132.00
						<b>Total : 369.00</b>
156685	12/31/2013	0007315 MAGNUSSON, JIM	1		TRAVEL REFUND	10.00
						<b>Total : 10.00</b>
156686	12/31/2013	0000530 MAILLIARD'S LANDING NURSERY	79827		TREE TIES	48.92
						<b>Total : 48.92</b>
156687	12/31/2013	0000660 MARKET PLACE FOOD & DRUG	346419 619883 646383		GROCERIES GROCERIES GROCERIES	148.14 504.76 353.51
						<b>Total : 1,006.41</b>
156688	12/31/2013	0006072 MASTER'S TOUCH, LLC	N131689		STORAGE UTILITY BILLS	1,369.62
						<b>Total : 1,369.62</b>
156689	12/31/2013	0000544 MATERIALS TESTING & CONSULTING	12200		PROF SVC/OAK HARBOR NORTH RESE	3,503.50
						<b>Total : 3,503.50</b>
156690	12/31/2013	0000545 MATTHEW BENDER & CO, INC	5435028X		WA STATE ENVRN PLY ACT	234.90

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156690	12/31/2013	0000545 0000545 MATTHEW BENDER & CO, INC	(Continued)			<b>Total : 234.90</b>
156691	12/31/2013	0000546 MATTHEWS, PHILLIP	EXP REIMB		EXP REIMB	174.70
						<b>Total : 174.70</b>
156692	12/31/2013	0007316 MAUTH, MARY	1		TRAVEL REFUND	30.00
						<b>Total : 30.00</b>
156693	12/31/2013	0006028 MCI COMM SERVICE	679-3902		LONG DISTANCE	36.23
						<b>Total : 36.23</b>
156694	12/31/2013	0004818 MICHAEL BOBBINK LAND USE SRVCS	121713		DEC 2013/HEARING EXAMINER SERVIC	1,500.00
						<b>Total : 1,500.00</b>
156695	12/31/2013	0005445 MONTOYA, MATTHEW J	122613		DEC 2013/PUBLIC DEFENSE	5,500.00
						<b>Total : 5,500.00</b>
156696	12/31/2013	0000581 MORRISON, BOB	1		DRIVING SERVICES	105.00
			1		DRIVING SERVICES	84.00
			1		DRIVING SERVICES	84.00
						<b>Total : 273.00</b>
156697	12/31/2013	0007321 NORTHWEST SCIENTIFIC, INC	5049766		METER KIT	2,154.50
						<b>Total : 2,154.50</b>
156698	12/31/2013	0000672 OAK HARBOR ACE	230676		KEY/FASTENERS	13.55
			230677		KEY/FASTENERS	-13.55
			231620		CORD	26.06
			232045		APRON CHAPS	103.25
			232062		FLANGE/PUTTY	11.72
			232067		FLANGE RETURN/DRAIN	3.26
			232069		PIPE WRAP	13.03
			232328		PIPE/RECYCLED REFLECTIVE	13.08
			232371		TAPE/REFLECTOR	58.58
			232388		TEE/BUSHING/DRAIN	33.81
			232439		BATTERIES	21.70
			232452		VALVE	10.86
			232457		VALVE	10.86

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156698	12/31/2013	0000672 OAK HARBOR ACE	(Continued)			
			232511		ROD/GREASE GUN	21.50
			232517		FASTENERS	6.51
			232526		LUBE/SCREWS	11.90
			232527		PUNCH/TOOL CADDY/FASTENERS	20.12
			232575		BLADE/PRIMER	15.20
			232577		WR&TMPR	74.97
			232593		PUSHBROOM	11.95
			232643		FASTENERS	15.39
			232754		STEM	20.63
			232757		FCT/SEAL TAPE/COVER/KIT	85.28
			232820		HANDLE	8.14
			232822		BATTERY	6.51
			232844		MAT	10.86
			232859		FASTENERS	2.28
			232867		SPLYFCT	35.28
			232870		EXTENSION RING	7.60
			232895		SPLYFCT/HINGE/BLT/KEY	19.07
			232909		ANTI-FREEZE	13.99
			232934		CABLE/CRIMPS	6.20
			232939		TAPE	61.04
			232940		HEAT TAPE	46.73
			232956		TOTE/BROOMS	57.00
			232965		CABLE TIES/TAPE	60.85
			232974		PLUMBING SUPPLIES	21.57
			232977		INSERT	3.26
			232986		NIPPLE/WRENCH	27.46
			233071		RECEPTACLE/OUTLET	14.97
			233074		CAP/CEMENT/SEAL TAPE	8.12
			233105		LOPPER/BLADE	45.09
			233113		PUNCH PINS/FASTENERS	27.09
			233122		ENGINE BRITE SPRAY	8.12
			233152		FREIGHT	13.65
			233180		ELBOW/PLUG	10.40
			233193		BALL VALVE	21.73
			233202		ELBOW	8.24
			233280		LIGHT CONTROL	14.12

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156698	12/31/2013	0000672 0000672 OAK HARBOR ACE			(Continued)	<b>Total : 1,149.03</b>
156699	12/31/2013	0000668 OAK HARBOR AUTO CENTER	001-188009		STARTING FLUID/FILTERS	40.11
						<b>Total : 40.11</b>
156700	12/31/2013	0000681 OAK HARBOR SCHOOL DISTRICT	0000130166		DEC 2013/COMPUTER NETWORK SUPI	6,708.33
						<b>Total : 6,708.33</b>
156701	12/31/2013	0003092 OAK HARBOR SIGNS	370		WINDOW LETTERING	48.92
						<b>Total : 48.92</b>
156702	12/31/2013	0000666 OGDEN MURPHY WALLACE	709265		PROF SVC/SWINOMISH INDIAN TRIBAL	27,481.85
						<b>Total : 27,481.85</b>
156703	12/31/2013	0000677 OHPD INVESTIGATIVE FUND	121613		DRUG FUND REPLENISH	1,039.04
						<b>Total : 1,039.04</b>
156704	12/31/2013	0007027 ORSWELL EVENTS, LLC	2013106		PERFORMANCE FEE	1,000.00
						<b>Total : 1,000.00</b>
156705	12/31/2013	0003164 PAINTERS ALLEY	22205 22623 23273		PAINT PAINT PAINT	65.22 353.04 120.66
						<b>Total : 538.92</b>
156706	12/31/2013	0001349 PARTNER CONSTRUCTION PRODUCTS	6232		TACK/DETACK	4,097.99
						<b>Total : 4,097.99</b>
156707	12/31/2013	0000702 PAYNE, RANDY	EXP REIMB		EXP REIMB	150.00
						<b>Total : 150.00</b>
156708	12/31/2013	0000709 PERS	01020723		NOV 2013/UNFUNDED LIABILITY	26.98
						<b>Total : 26.98</b>
156709	12/31/2013	0000299 PLACE, SANDRA	EXP REIMB		EXP REIMB	735.00
						<b>Total : 735.00</b>
156710	12/31/2013	0000724 PONY MAILING & BUSINESS CENTER	217594		SHIPPING	17.94

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156710	12/31/2013	0000724 PONY MAILING & BUSINESS CENTER	(Continued) 217786		SHIPPING	50.00
<b>Total :</b>						<b>67.94</b>
156711	12/31/2013	0005647 PORTER, DAVID	507339		BANNERS	163.05
<b>Total :</b>						<b>163.05</b>
156712	12/31/2013	0000730 POWELL, JANIS	1		DRIVING SERVICES	108.00
			1		DRIVING SERVICES	72.00
			1		DRIVING SERVICES	54.00
<b>Total :</b>						<b>234.00</b>
156713	12/31/2013	0000743 PUGET SOUND ENERGY	200000136776		ELECTRICITY/1301 SE CATALINA DR	36.65
			200000881421		ELECTRICITY/DISPLT	4,739.68
			200000919684		ELECTRICITY/WINDMILL	10.21
			200000947859		ELECTRICITY/CITY SHOP	3,441.13
			200001097589		ELECTRICITY/E BATHROOM	15.30
			200001884218		ELECTRICITY/1888 NE 5TH AVE	13.98
			200002036164		ELECTRICITY/30505 ST ROUTE 20	267.37
			200002036719		ELECTRICITY/34777 STATE ROUTE 20	101.16
			200002036917		ELECTRICITY/BTWN BAYSHORE DR & I	143.40
			200002037097		ELECTRICITY/2000 SW SCENIC HEIGH'	24.62
			200002037261		ELECTRICITY/1780 SW SPRINGFIELD C	10.82
			200002037501		ELECTRICITY/3285 SW SCENIC HEIGH'	112.73
			200002170617		ELECTRICITY/552 NW CLIPPER DR	10.21
			200002511539		ELECTRICITY/2075 SW FT	16.24
			200002723381		ELECTRICITY/CMFTST	172.36
			200003267636		ELECTRICITY/1000 SE IRELAND ST	24.34
			200003459654		ELECTRICITY/1957 FORT NUGENT RO/	171.72
			200004342099		ELECTRICITY/650 NE 7TH AVE	25.37
			200004562878		ELECTRICITY/800 SE MIDWAY BLVD	182.57
			200004856627		ELECTRICITY/1577 NW 8TH AVE	10.21
			200005263310		ELECTRICITY/SMITH PARK	10.21
			200005461666		ELECTRICITY/WKITCHEN	11.54
			200005643446		ELECTRICITY/NEIL PK & HOLLAND GAF	30.09
			200006103952		ELECTRICITY/5941 STATE ROUTE 20	14.46
			200007268135		ELECTRICITY/SW ERIE ST SW BARRIN	165.52

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156713	12/31/2013	0000743	PUGET SOUND ENERGY			
			(Continued)			
			200007702943		ELECTRICITY/700 AV W & MIDWAY	246.84
			200007824192		ELECTRICITY/75 SE JEROME ST	10.21
			200008386993		ELECTRICITY/FABER ST & HARVEST D	10.82
			200008816189		ELECTRICITY/ANNEX	20.56
			200010322895		ELECTRICITY/2330 SW ROSARIO PL	37.73
			200010499248		ELECTRICITY/1948 NW CROSBY AVE	119.43
			200010499446		ELECTRICITY/1661 NE 16TH AVE	24.79
			200010530240		ELECTRICITY/651 SE BAYSHORE DR	113.05
			200010530802		ELECTRICITY/CITY BEACH PARK	10.84
			200010531024		ELECTRICITY/940 SE PIONEER WAY	282.45
			200010531172		ELECTRICITY/1300 NE BIG BERRY LOC	10.91
			200010531354		ELECTRICITY/CABI	213.48
			200010531941		ELECTRICITY/800 SE DOCK ST	138.63
			200010699706		ELECTRICITY/BALLPK	26.42
			200011316839		ELECTRICITY/SR 20 & 650 AV W	1,403.97
			200011551930		ELECTRICITY/ADULT CARE CENTER	36.62
			200011579964		ELECTRICITY/285 SE JEROME ST	13.82
			200012220337		ELECTRICITY/128 E WHIDBEY AVE	10.21
			200012278087		ELECTRICITY/FIRE STATION	1,300.26
			200012425357		ELECTRICITY/TREATMENT PLANT	2,636.44
			200012838765		ELECTRICITY/PIONEER PARK	20.94
			200013734963		ELECTRICITY/672 CHRISTIAN RD	542.83
			200013968405		ELECTRICITY/LIFTST	123.01
			200014151886		ELECTRICITY/1370 SE DOCK ST	78.68
			200014366534		ELECTRICITY/700 AV W & 80 NW	274.76
			200014596478		ELECTRICITY/CITY HALL	975.94
			200015399153		ELECTRICITY/1678 SW 8TH AVE	10.32
			200015618321		ELECTRICITY/600 NE 7TH AVE	131.45
			200015685833		ELECTRICITY/287 SE CABOT DRIVE	80.56
			200017255619		ELECTRICITY/690 SW HELLER RD	585.17
			200017441482		ELECTRICITY/CITY BEACH PARK	721.15
			200017575347		ELECTRICITY/1367 NW CROSBY AVE	137.65
			200017653656		ELECTRICITY/3300 OLD GOLDIE RD	79.64
			200017654415		ELECTRICITY/1000 SW THORNBERRY I	199.79
			200017853025		ELECTRICITY/2081 NE 9TH AVE	11.81
			200017968427		ELECTRICITY/POLICE STATION	1,759.53

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Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156713	12/31/2013	0000743	PUGET SOUND ENERGY		(Continued)	
			200019043344		ELECTRICITY/90 SE PIONEER WAY	65.57
			200019500517		ELECTRICITY/1137 NW KATHLEEN DR	39.51
			200020179194		ELECTRICITY/626 CHRISTIAN RD	43.60
			200020235012		ELECTRICITY/SENIOR CENTER	1,145.62
			200020308330		ELECTRICITY/KITCHEN	11.19
			200022441113		ELECTRICITY/980 SW MCCROHAN ST	59.38
			200023231067		ELECTRICITY/945 E WHIDBEY AVE	39.37
			200023360569		ELECTRICITY/700 S HELLER RD	71.44
			200024715845		ELECTRICITY/1285 NE TAFTSON ST	34.79
			200025075157		ELECTRICITY/33500 STATE ROUTE 20	336.99
			220000598098		ELECTRICITY/ANIMAL SHELTER	162.67
			220002247165		ELECTRICITY/SW FAIRWAY POINT DR	13.13
			300000005003		ELECTRICITY/RV PARK	386.43
			300000009906		ELECTRICITY/2220 SW VISTA PARK DR	37.15
			300000010409		ELECTRCITY/RIDGEWOOD PARK	60.24
			300000010458		ELECTRICITY/INTSCTN OF MIDWAY & N	401.38
			300000010516		ELECTRICITY/900 SE MIDWAY BLVD	260.59
			400000492852		ELECTRIC MODIFIED SERVICE/GUN CL	107,486.09
					<b>Total :</b>	<b>132,817.74</b>
156714	12/31/2013	0007318	PUGET SOUND MENTAL HEALTH	42	PROF SVC	800.00
					<b>Total :</b>	<b>800.00</b>
156715	12/31/2013	0003694	RECYCLING, WASHINGTON STATE ASSOC C	300000073	BLUE 1	150.00
					<b>Total :</b>	<b>150.00</b>
156716	12/31/2013	0002508	RINEY PRODUCTION SERVICES	10-1124	TAPING SERVICES	2,936.34
					<b>Total :</b>	<b>2,936.34</b>
156717	12/31/2013	0000791	SCHEER, KEVIN	EXP REIMB	EXP REIMB	173.11
					<b>Total :</b>	<b>173.11</b>
156718	12/31/2013	0000801	SEA WESTERN, INC	173467	HELMETS/LEATHER FRONTS	1,877.50
					<b>Total :</b>	<b>1,877.50</b>
156719	12/31/2013	0000852	SENIOR CENTER PETTY CASH	120213	PETTY CASH	189.74

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156719	12/31/2013	0000852 0000852 SENIOR CENTER PETTY CASH	(Continued)			<b>Total : 189.74</b>
156720	12/31/2013	0000809 SENIOR SERVICES OF ISLAND	OH11-2013		NOV 2013/SENIOR SERVICES	1,500.00
						<b>Total : 1,500.00</b>
156721	12/31/2013	0007317 SERVICE MASTER	121613		DUMPSTER DEPOSIT REFUND	2,000.00
						<b>Total : 2,000.00</b>
156722	12/31/2013	0000816 SHELL FLEET PLUS	0000000065163545312		FUEL	29.68
						<b>Total : 29.68</b>
156723	12/31/2013	0000822 SHRED-IT USA, INC	9402935549 9402935604		SHREDDING SHREDDING	89.90 69.30
						<b>Total : 159.20</b>
156724	12/31/2013	0005444 SIERRA, GEORGINA D	123013		DEC 2013/PUBLIC DEFENSE	2,500.00
						<b>Total : 2,500.00</b>
156725	12/31/2013	0004184 SIPES, TAMRA	123113		DEC 2013/RACE COORDINATOR	2,546.00
						<b>Total : 2,546.00</b>
156726	12/31/2013	0000814 SKAGIT FARMERS SUPPLY	434259 435522 436929		BOOTS GLOVES STUMP OUT GRANULES	103.25 13.02 15.20
						<b>Total : 131.47</b>
156727	12/31/2013	0000877 SKAGIT VALLEY HERALD	8263189		SUBSCRIPTION RENEWAL	144.00
						<b>Total : 144.00</b>
156728	12/31/2013	0000846 SOUND PUBLISHING	600961		NOV 2013/PUBLICATIONS-ACCT#80125	634.65
						<b>Total : 634.65</b>
156729	12/31/2013	0000851 SPRINT	414568819-073		CURRENT CELL CHARGES	508.09
						<b>Total : 508.09</b>
156730	12/31/2013	0000851 SPRINT	182311697		LONG DISTANCE	5.65
						<b>Total : 5.65</b>

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156731	12/31/2013	0000860 STANDARD INSURANCE COMPANY	121913		LIFE/POCFF	233.13
<b>Total :</b>						<b>233.13</b>
156732	12/31/2013	0003883 STAPLES BUSINESS ADVANTAGE	3215181388		TONER	314.77
			3215693430		PAPER/CARDS	163.12
			3215693431		STENO BOOKS/LEGAL PADS	30.98
			3216129178		OUTLET	195.25
			3216129179		COVER STOCK/BAGS/ENVELOPES	36.51
<b>Total :</b>						<b>740.63</b>
156733	12/31/2013	0000856 STATE AUDITOR'S OFFICE	L100899		2013 AUDIT SERVICES FOR 2012	19,912.58
<b>Total :</b>						<b>19,912.58</b>
156734	12/31/2013	0007305 STROW, PETER	22		MUNICIPAL COURT PRO TEM	578.18
<b>Total :</b>						<b>578.18</b>
156735	12/31/2013	0000874 SURETY PEST CONTROL	387403		PEST EXTERMINATION	32.61
			387404		PEST EXTERMINATION	30.44
			387405		PEST EXTERMINATION	30.44
			387406		PEST EXTERMINATION	43.48
			387407		PEST EXTERMINATION	43.48
			387417		PEST EXTERMINATION	38.05
			388775		PEST EXTERMINATION	43.48
			388794		PEST EXTERMINATION	59.79
			388811		PEST EXTERMINATION	48.92
			390381		PEST EXTERMINATION	59.79
<b>Total :</b>						<b>430.48</b>
156736	12/31/2013	0004535 TAYLOR, CRAIG	EXP REIMB		EXP REIMB	179.01
<b>Total :</b>						<b>179.01</b>
156737	12/31/2013	0000996 THOMSON REUTERS WEST	828219182		SUBSCRIPTION CHARGES	773.41
			828414996		SUBSCRIPTION PRODUCT CHARGES	238.60
<b>Total :</b>						<b>1,012.01</b>
156738	12/31/2013	0007280 TRI COUNTY RECYCLING, INC	2		RECYCLING	555.75
<b>Total :</b>						<b>555.75</b>

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount
156739	12/31/2013	0000923 UNITED PARCEL SERVICE	0000A0182W463 0000A0182W473 0000A0182W483		SHIPPING SHIPPING SHIPPING	24.91 11.82 10.65 <b>Total : 47.38</b>
156740	12/31/2013	0000926 USABLUBOOK	214233		BRACKET/FLOATS/LOCATORS	1,212.01 <b>Total : 1,212.01</b>
156741	12/31/2013	0001639 WASHINGTON CITIES INSURANCE	OH-197		REGISTRATION/MERRIMAN	50.00 <b>Total : 50.00</b>
156742	12/31/2013	0007319 WASHINGTON MILITARY DEPARTMENT	121813		PACIFIC INTERPRETERS NOVEMBER U	82.90 <b>Total : 82.90</b>
156743	12/31/2013	0001052 WASHINGTON STATE PATROL	I14003728 I14003968		BACKGROUND CHECKS BACKGROUND CHECKS	40.00 363.00 <b>Total : 403.00</b>
156744	12/31/2013	0006853 WEED, GRAAFSTRA & BENSON, INC, LAW O: 18			PROF SVC/GENERAL 2013	19,511.50 <b>Total : 19,511.50</b>
156745	12/31/2013	0005064 WHATCOM COUNTY AS FINANCE	20331		4TH QTR 2013/NW MINI CHAIN	444.75 <b>Total : 444.75</b>
156746	12/31/2013	0003067 WHIDBEY ANIMALS' IMPROVEMENT	121213		RESTITUTION	225.00 <b>Total : 225.00</b>
156747	12/31/2013	0001000 WHIDBEY AUTO PARTS, INC.	197501		HEX BIT	26.00 <b>Total : 26.00</b>
156748	12/31/2013	0000675 WHIDBEY COMMUNITY PHYSICIANS	091913-101 121113-19		PHYSICAL/NYDAM PHYSICAL/EDDY	225.00 188.98 <b>Total : 413.98</b>
156749	12/31/2013	0001017 WHIDBEY PRINTERS	46625		ENVELOPES	230.93 <b>Total : 230.93</b>
156750	12/31/2013	0001010 WHIDBEY TELECOM	3653280		SERVICE CHARGES	42.08

Bank code : bank

Voucher	Date	Vendor	Invoice	PO #	Description/Account	Amount	
156750	12/31/2013	0001010 WHIDBEY TELECOM	(Continued) 3655362 3656476		SERVICE CHARGES ALARM MONITORING	0.24 63.05	
<b>Total :</b>						<b>105.37</b>	
156751	12/31/2013	0001024 WILLIAMS, ROBERT	EXP REIMB		EXP REIMB	85.00	
<b>Total :</b>						<b>85.00</b>	
156752	12/31/2013	0001061 XEROX CORPORATION	701699124		OCT 2013/COPIER RENTAL	4,078.08	
<b>Total :</b>						<b>4,078.08</b>	
<b>151 Vouchers for bank code :</b>		bank				<b>Bank total :</b>	<b>764,416.46</b>
<b>151 Vouchers in this report</b>						<b>Total vouchers :</b>	<b>764,416.46</b>

# City of Oak Harbor City Council Agenda Bill

**Bill No.** C/A 4.c.  
**Date:** 01/07/14  
**Subject:** Professional Services  
Agreement for 2014  
Whidbey Island Marathon  
and Half Marathon  
Contractor – AA Sports, LTD



**FROM:** Larry Cort, City Administrator

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

      Scott Dudley, Mayor  
     Doug Merriman, Finance Director  
     Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

This agenda bill requests City Council approval of a Professional Services Agreement with AA Sports, LTD in the estimated amount (based on 2,500 participants) of \$10,560 to assist the City with race timing, scoring and Bib/Chip preparation support for the 2014 Whidbey Island Marathon and Half Marathon.

**FISCAL IMPACT DESCRIPTION**

Funds Required: \$ 10,560      Appropriation Source: Fund #006 – Whidbey Island Marathon

**SUMMARY STATEMENT**

In 2009, the City Council approved the purchase of the Whidbey Island Marathon and Half Marathon. The Marathon attracts runners from throughout the country and other countries. In 2012, there were 1,880 participants and in 2013 there were 1,749 participants. The Marathon is an established event that promotes economic development for the City of Oak Harbor.

Sufficient City resources are not available to provide all of the staff support necessary to run a successful event of this scale. AA Sports, LTD will assist the city in providing overall data entry, timing and scoring using the MYLAPS “Chip on the Bib” Timing System for this large-scale event. AA Sports LTD is a full-service Race Management & Timing Company which presently owns, times and/or manages over 80 events, primarily in the Pacific Northwest.

**RECOMMENDED ACTION**

Authorize the Mayor to sign the agreement with AA Sports LTD for marathon timing support as outlined in the Scope of Work for an amount estimated to be \$10,560.00 based on 2,500 runners.

**ATTACHMENTS**

1. AA Sports LTD qualification and proposal.
2. Professional Services Agreement with AA Sports LTD.



AA Sports, Ltd.  
 4836 SW Western Ave  
 Beaverton, Oregon 97005  
 Phone: (503) 531-3140

Email: [jon@aaSPORTS.com](mailto:jon@aaSPORTS.com)  
 Web: [www.aaSPORTS.com](http://www.aaSPORTS.com)

**TIMING AGREEMENT**

THIS TIMING AGREEMENT (this "Agreement") is entered into as of 11/5/13, between AA Sports, Ltd., ("AA Sports"), and the City of Oak Harbor, WA (*RACE*), in connection with the **Whidbey Island Marathon** (Full Marathon, ½ Marathon Run, ½ Marathon Walk, 10K & 5K) to be held on Sunday, April 13, 2014 in Oak Harbor, WA. Timing and scoring will be accomplished using the MYLAPS "Chip on the Bib" Timing System.

**AA SPORTS, LTD. OUTLINE OF RESPONSIBILITIES & FEE SCHEDULE:**

<b>TIMING / SCORING:</b>	\$1.50 per <u>registered timed</u> participant (\$1,500.00 minimum) (Based on an estimated <b>2,500</b> registered timed participants)	\$ <u>3,750.00</u>
	\$0.50 per <u>registered non-timed</u> participant (Based on an estimated <b>50</b> registered non-timed participants)	\$ <u>25.00</u>

Fee includes data base management; providing, printing & affixing all pre-registered participant labels to the back of the bibs; pre-race confirmation lists posted by event; the posting of all results or participant lists in alpha order (non-timed races) post-race. Note that the bib #'s and safety pins are an expense covered by the *RACE*

**REGISTRATION / PACKET PICKUP SERVICES INCLUDED**

- Set up of Secured On-line Entry with RegToRace (at Clients Request:  Yes  No)  
Provide client with hyperlink to on-line entry for posting on their website
- Create "fillable" downloadable entry form (at Clients Request:  Yes  No)  
Provide client with hyperlink to downloadable form for posting on their website
- Data Entry of all pre-registered participants including changes.
- On-line confirmations posted on the [www.aaSPORTS.com](http://www.aaSPORTS.com) website for mail-in, in-store & on-line entries. Confirmations posting to begin 30 days prior to race day and to be updated once a week until two weeks prior to the race when they will be updated twice a week.  
Provide to the *RACE* hyperlink(s) prior to the posting of the first registrants. Note that only your list will be viewed and upon closing the window your audience will return to your *RACE* website.
- Provide to the *RACE* a count of pre-sold T-shirts, broken down by size, to aid in proper distribution (**upon Clients Request**)
- Provide to the *RACE* one copy of the alphabetical listings of all pre-registered participants for pre-race packet pickup and day-of-race packet distribution. Additional copies to be made by the *RACE* through a photocopy service at the *RACE'S* expense.

**TIMING SERVICES**

- Start & Finish Line Timing Equipment (includes start lines & finish line)
- 2 - Display Clocks  
On-line result files posted on the [www.aaSPORTS.com](http://www.aaSPORTS.com) website  
Provide to the *RACE* hyperlink(s) prior to the day of race for viewing the race results. Note that only your race results will be viewed and upon closing the window your audience will return to your *RACE* website.
- Provide all "unofficial" results for posting at the finish area as the race is in progress
- Provide "Award results" for the post race awards ceremony

- Provide a spiral bound book of race results (**upon Clients Request**) broken down into:
  - A) Race Statistics
  - B) Award Results
  - C) Chronological Order
  - D) Alpha Order
- Two (2) promotional monthly AA Sports shared email blast sent to 110,000+ NW athletes who have participated in an organized race in the past 18 months.

Your event will benefit from inclusion in two (2) shared email blasts at no cost to you. Your event will automatically be listed in the shared email blast one month and two months prior to your event date or you may choose which months you wish to be included by checking two of the boxes in the table below. If you wish to change your assigned or chosen month's send date you must provide a minimum of 30 days notice prior to the send date you desire by emailing us at [events@aaSPORTS.com](mailto:events@aaSPORTS.com). Please make the subject line: Shared Email Blast Date Change for "Race Name"

### AA SPORTS EMAIL BLAST SCHEDULE FOR 2014

<u>SEND DATE</u>	<u>SERVES AS</u>	
Tuesday, December 26, 2013	January 2014 shared email blast	<input type="checkbox"/>
Tuesday, January 28, 2014	February 2014 shared email blast	<input type="checkbox"/>
Tuesday, February 25, 2014	March 2014 shared email blast	<input type="checkbox"/>
Tuesday, April 1, 2014	April 2014 shared email blast	<input type="checkbox"/>
Tuesday, April 29, 2014	May 2014 shared email blast	<input type="checkbox"/>
Thursday, May 29, 2014	June 2014 shared email blast	<input type="checkbox"/>
Tuesday, July 1, 2014	July 2014 shared email blast	<input type="checkbox"/>
Thursday, July 24, 2014	August 2014 shared email blast	<input type="checkbox"/>
Thursday, August 28, 2014	September 2014 shared email blast	<input type="checkbox"/>
Tuesday, September 30, 2014	October 2014 shared email blast	<input type="checkbox"/>
Thursday, October 30, 2014	November 2014 shared email blast	<input type="checkbox"/>
Tuesday, Nov 25, 2014	December 2014 shared email blast	<input type="checkbox"/>

### ADDITIONAL PROMOTIONAL OPPORTUNITIES

- If you wish your race to be one of three "3" featured races shown at the top of the shared email blast, the cost will be \$50 for each blast you select for this designation. **Note! This is on a first come first serve basis, and subject to approval by AA Sports.**
  - If you wish to be included in additional shared email blasts, the cost is \$250.00 each. Email your request to [events@aaSPORTS.com](mailto:events@aaSPORTS.com) at **least 30 days prior** to the send date for the additional month's blast.
  - If you wish your race to have a "dedicated" email blast (no other races included, solely about your event) the cost is \$500 each. **Note! You cannot substitute a dedicated blast for one of your free shared email blasts or receive a discount.** Dedicated blasts are in addition to your two free shared email blasts.
  - Additional Promotional Opportunities will be billed as a separate invoice from your timing bill.
- Inclusion in RaceCenter NW Event Calendar (print/website): (**RACE representative's initials \_\_\_\_\_**)

It is the responsibility of the Race Director to go to the RaceCenter NW website and submit their event listing, which will appear on the RaceCenter.com online calendar, and will also be used for the printed editions of RaceCenter NW Magazine throughout the year. No one knows their race better than the Race Director and the information found on any given **RACE** website may not be updated accurately. For this reason it is best that the Race Director administer their own calendar listings to ensure the accuracy of the information conveyed to the prospective participants of their events.

Just follow these simple steps:

- Go to [www.racecenter.com](http://www.racecenter.com)
- Click on "Race Calendar", second link from the left in the black bar below the RaceCenter logo
- At the top and on the right side of the page click on the tab labeled "Submit an Event"
- Create an account if you have not done so before or enter your account by typing in your user name & password. After you have created your account (and updated your password) click on "Add New Event" in the upper right corner
- Now simply provide answers to the questions asked that you wish posted in your online and print calendar listing and complete the process by clicking "Add New Event" at the bottom of the page (note that this same calendar listing information is also viewable from [www.aasportsltd.com](http://www.aasportsltd.com))
- If your event has previously been listed within the RaceCenter calendar, rather than adding duplicate calendar listings for an event from year to year, simply update your old listings with your future event date and update any other fields if that information has changed.
- If you have posted an event and need to make changes, you can login to the calendar and make modifications to your listing(s)
- NOTE: If you are interested in learning more about advertising in RaceCenter Northwest Magazine, or on the widely-used RaceCenter.com website, please contact Brook Gardner - [brook@racecenter.com](mailto:brook@racecenter.com) or call 541-617-0885

- Complete participant database emailed in an Excel spreadsheet (upon Clients Request)
- Results to the local media electronically and/or hard copy (upon Clients Request)

**Participants Signing up at Packet Pickup / Day-of-Race:** \$ 50.00  
 Add \$0.50 per registered participant (Based on an estimated 100 registered participants)

**Additional Prepared Bibs:** (Based on an estimated 50 for each "timed" race @ \$0.40ea). \$ 100.00  
 The RACE is to notify AA Sports no less than 5 days prior to the race packet pickup date as to how many additional bibs per race they wish to have prepared for late registrants (packet pickup & day-of-race) if more than 50 are desired for each race. Additional Prepared Bibs will be billed at \$0.40 each for any unused chipped bibs equaling the "# of races x 50". Additional Prepared Bibs exceeding this quantity will be billed at \$1.00 each. This system is used to prevent the waste of purchased chips thereby keeping the cost down for the RACE. Additional chips always reside with the timer in the event additional tagged bibs are needed at packet pickup or on the day-of-race.

**MYLAPS Disposable "Chip on the Bib" – Purchase & Prep:** \$ 4,000.00  
 \$1.60 per registered timed participant. Includes affixing the MYLAPS chip to the back of the race bib. **NOTE!** The bib #'s and safety pins are an expense covered by the RACE.  
 (Based on an estimated 2,500 registered timed participants)

**Automatic Announcing:** (RACE rep's initials if accepting \_\_\_\_\_) \$ 200.00  
 AA Sports provides all timing equipment needed to enable the RACE Announcer to announce all Chipped participants as they approach the finish line. The RACE is to provide any delineators required to funnel participants across and to protect the announcing equipment. **NOTE!** Day-of-race participants may not be announced based on the time needed to complete data entry.

**Travel Expense:** \$ 935.00  
 Roundtrip mileage expense for the transport of the Motor Home and the vehicle carrying the timing equipment. Cost is \$0.85 per mile based on diesel fuel being approximately \$4.00/gallon. Cost per mile may decrease or increase depending on the prevailing fuel costs at the pump.

\* 550 round trip miles from Beaverton, OR to Oak Harbor, WA x 2 vehicles

**Lodging Expense:** (RACE representative's initials \_\_\_\_\_) \$ Race Comp  
 RACE to provide the following for timing crew:

- ◆ 3 Rooms on Friday
- ◆ 3 Rooms on Saturday
- ◆ 3 Rooms on Saturday

“Race Comp” means that the *RACE* makes the lodging accommodation booking so that they may use a sponsor or get the accommodation at a reduced cost using their connections.

**“Optional” On-Line Result Certificates** (*RACE* rep’s initials if accepting \_\_\_\_\_) \$ 300.00

An example of the on-line certificates can be seen by clicking the following link:

<http://racecenter.com/Certificates/pages/results.php?rc=AAS-cm13&rl=AL>

The *RACE* need only provide the logo artwork and the Race Director’s signature in a pdf or high resolution jpeg format. All other information is standardized and taken from the *RACE* timing files. Note! Certificates are posted 48 hours post-race to allow for any necessary changes to be made to the race results prior to the participants printing off their certificates.

**ADDITIONAL REQUESTED SERVICES / NEEDS**

**Packet Pickup Solutions Table Management:** (Race representative initials \_\_\_\_\_) \$ 300.00

AA Sports will have one manager to work with the *RACE* volunteers to setup the packet pickup and to manage the Solutions Table on Saturday & the day of the race. (Based on 10 hours at \$30.00 / hr)

**On-Course Split Mats (2 Turn-Around Locations):** (Race representative initials \_\_\_\_\_) \$ 600.00

*RACE* agrees to provide a minimum of 2 volunteers at each location to watch over the equipment when it is put out and to provide a vehicle with driver to assist in putting out the equipment.

**Vehicle Rental Expense:** \$ 300.00

Rental of an on-course vehicle (estimated at \$300.00) for the distributing and pickup of split point timing equipment. Cost of renting a vehicle is significantly less expensive than AA Sports bringing a third vehicle to the race.

**SUMMARY OF “ESTIMATED” EXPENSES**

Below is a summary of the AA Sports provided services described above. The final bill will reflect costs based on the actual number of athletes who registered for the race. Note that the number of registered participants is always greater than the number of actual finishers.

ITEM	ESTIMATED COST
AA Sports Timing Fee (“timed” registered participants)	\$ <u>3,750.00</u>
AA Sports Timing Fee (“non-timed” registered participants)	\$ <u>25.00</u>
Packet Pickup / Day-of-Race Registration Fee	\$ <u>50.00</u>
Additional Prepared Bibs for Late Registrants	\$ <u>100.00</u>
Disposable Chip Purchase & Bib Prep	\$ <u>4,000.00</u>
Automatic Announcing	\$ <u>200.00</u>
Travel Expense	\$ <u>935.00</u>
Lodging Expense	\$ <u><i>RACE</i> Comp</u>
Optional On-Line Result Certificates	\$ <u>300.00</u>
Packet Pickup Solutions Management	\$ <u>300.00</u>

On-Course Split Mats	\$ <u>600.00</u>
Course Vehicle Rental	\$ <u>300.00</u>
<b>TOTAL ESTIMATE</b>	<b>\$ <u>10,560.00</u></b>

**“RACE” OUTLINE OF RESPONSIBILITIES:**

The *RACE* will provide or coordinate the following logistics for the Event:

- Provide to AA Sports clear, unambiguous details for the following:
  - Race name, date & individual event start times
  - Bib # sequence to be used for each event (timed & non-timed events)
  - Age division breakdowns for each event
  - Awards results breakdown & time of awards ceremony for each event
  - Start, finish line & on-course timing locations and direction runners are traveling
  - Race bib number sequences for each event (*NOTE!* Check with AA Sports prior to ordering your bib numbers)
  - The number of bibs you wish prepared for each race

- Race bibs for each event – ship to the following address at least three weeks prior to your race:

AA Sports, Ltd  
 C/o “Name of the Race”  
 4836 SW Western Ave  
 Beaverton, OR 97005

*Note!* AA Sports will provide safety pins at a cost of \$15.00 per 10 gross box. You are charged ONLY for the pins required for the registered timed participants (4 pins per participant)

- Provide accommodation details (hotel name, address, contact phone number & registration confirmation #)
- Have the timing areas free of traffic flow at least 60 minutes prior to the start of the race to allow for equipment setup & testing. If the road must be left open to traffic then provide a minimum of two volunteers to direct traffic around the equipment (per location) *RACE* representative’s initials \_\_\_\_\_)
- Have a pre-set location where the results are to be posted and volunteers to get these results from the timer and to post them (be sure they have tape!)
- Bring to the timer all Day-of-Race entries (sorted by race) in a timely fashion (*DO NOT* wait until registration is over and bring them all at once)
- Provide the following Timing / Finish Line Volunteers. It is important to note that the actual timing costs for the event are reduced significantly when the *RACE* provides personnel to handle these simple tasks rather than the Timing Company having to bring additional staff for these jobs.

	<u># VOL REQ'D</u>
• Record top 10 Males & Females (bib #'s only) as they cross the finish line	2
• Pick up printed results from the timer and post in a designated location chosen by the <i>RACE</i>	2

**Total: 4**

**TERMS OF AGREEMENT**

AA Sports and the *RACE* agree as follows:

**A. Payments, Invoices, Reimbursements and Budget.**

1. The *RACE* will pay AA Sports for its services, and will reimburse AA Sports, as follows:
  - a) A down payment of 25% of the estimated billing (rounded to the nearest \$100.00 = \$2,600.00) *RACE* representative’s initials \_\_\_\_\_)

- b) **The Race Timing and Scoring Fees and Bib/Chip Preparation Fees** (each based on the number of registered participants) is payable within 10 days after the date of the AA Sports' final invoice sent post-race.
  - c) **Reimbursement** for all expenses incurred by AA Sports in connection with the event is payable within 10 days after the date of the AA Sports' final invoice sent post-race.
2. The **RACE** will pay AA Sports as set forth in this Agreement regardless of whether the **RACE** collects amounts owed by third parties, including sponsors.
  3. If the **RACE** terminates this Agreement, or if the Event is not held, due to a Force Majeure Event (defined in Paragraph G below), AA Sports will be entitled to receive, within 10 days after the date of its invoice, all of its reimbursement for expenses incurred by AA Sports in connection with the Event.
  4. If the **RACE** terminates this Agreement or cancels the Event for any reason other than a Force Majeure Event or in accordance with Paragraph C below, the **RACE** will pay AA Sports all the fees and services set forth in Paragraph A.1. (for the actual number of registered participants, or if the Event is cancelled, for the number of participants previously registered for the Event).
  5. The **RACE** will have the option to pay third-party vendors directly, or to reimburse AA Sports for the third-party vendors' costs and expenses. Any expenditure made by AA Sports must be preapproved by the **RACE**.
  6. Any third-party invoices paid directly by AA Sports will be made available to the **RACE** upon request.
- B. **Term.** This Agreement's term will extend until all the parties' obligations under this Agreement are satisfied, unless earlier terminated in accordance with this Agreement. This Agreement will also extend to the following year's event if the **RACE** has not notified AA Sports within 60 days post-race of its intent to seek another Timing Company or Company/Individual of any kind to provide the services presented in this Agreement. **RACE representative's initials \_\_\_\_\_**)
  - C. **Termination.** Either party may terminate this Agreement by giving the other party notice if the other party defaults in performing any material term or condition of this Agreement, and if the default has not been cured within 10 days after it receives written notice of the default from the non-breaching party.
  - D. **Insurance:** The **RACE** will obtain liability insurance to cover the Event, with coverage's and policy limits of a type and in an amount (in no event less than \$1,000,000) that are reasonable within the industry for events of the type and size of the Event. The **RACE** will list AA Sports as a named insured on all insurance policies covering the Event.
  - E. **Participant Waivers:** The **RACE** will cause each Event participant to sign a waiver releasing AA Sports from liability and waiving any claims against AA Sports for damages resulting from his or her participation in the Event.
  - F. **Independent Contractor.** AA Sports will perform services under this Agreement as an independent contractor of the **RACE**.
  - G. **Force Majeure:** Neither party will be liable if it is prevented from or delayed in performing its obligations under this Agreement if the delay is caused by war, riot, explosion, fire, flood, earthquake, or other event beyond the reasonable control of the affected party (each a "Force Majeure Event").
  - H. **Limitation of Liability:** Neither party's liability for money damages, however caused, arising out of or related to this Agreement will exceed the total amount paid or payable to AA Sports had it fully performed its obligations under this Agreement.
  - I. **Governing Law, Jurisdiction and Venue:** This Agreement will be interpreted under and governed by the laws of the State of Oregon, without regard to its conflict of laws principles. The **RACE** irrevocably consents to the jurisdiction of the state and federal courts located in Multnomah County, Oregon in connection with all actions arising out of or in connection with this Agreement, and waives any objections that venue is an inconvenient forum. The **RACE** will not

initiate any action against AA Sports in any other jurisdiction. A final judgment in any action or proceeding may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

- J. **Binding Arbitration:** The parties to this agreement hereby agree to submit all disputes and claims arising out of or relating to this agreement to binding arbitration before the American Arbitration Association in Portland, Oregon. The parties understand and agree that by submitting to binding arbitration they are waiving their rights to a jury trial and to an appeal to the arbitrator's decision. The costs of the arbitration shall be advanced one half to each side, with the arbitrator having the power to reallocate cost to either party.
- K. **Indemnity:** The *RACE* will indemnify, defend, and hold harmless AA Sports and its officers, directors, employees and agents from and against all Losses asserted directly or indirectly by any other person that arise as not a result of our (AA Sports) negligence.
- L. **Entire Agreement; Amendment:** This Agreement contains the parties' entire agreement with respect to the matters it addresses and supersedes all prior written or oral agreements or understandings. No change, modification or waiver of any provision of this Agreement will be valid unless it is in writing and signed by both parties.
- M. **Successors and Assigns:** This Agreement will bind the successors and assigns of the parties. AA Sports may retain subcontractors to perform any part of its obligations under this Agreement without the *RACE's* prior approval.
- N. **Severability:** If any provision of this Agreement is held to be illegal, invalid or unenforceable, that provision will be void to the extent it is contrary to applicable law and that holding will not affect the validity of any other provision of this Agreement.
- O. **Attorney Fees:** If either party initiates any legal proceeding, including an appeal, to interpret or enforce any provision of this Agreement, the party not prevailing will pay the prevailing party's expenses, costs, and reasonable attorney fees, at trial and on appeal, as determined by the court or arbitrator(s).
- P. **Other Parties:** Nothing in this Agreement will be construed as giving any person other than the parties any right, remedy, or claim under or in respect of this Agreement or any provision hereof.
- Q. **Survival:** Paragraphs A, H, I, J, N, R, and each other provision of this Agreement that by its nature provides for rights, obligations or remedies that extend beyond the termination of this Agreement, will survive and continue in full force and effect after this Agreement is terminated.
- R. **Counterparts:** This Agreement may be executed in counterparts, each of which will constitute an original but all of which together will constitute one and the same instrument.
- S. **Interpretation:** Paragraph headings are for convenience only and do not affect the meaning or interpretation of this Agreement. The word "person" includes individuals, corporations, limited liability companies, and other natural and legal persons. Both parties have had the opportunity to have this Agreement reviewed by their attorneys. Therefore, no rule of construction or interpretation that disfavors the Party drafting this Agreement or any of its provisions will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to the fair meaning of its terms.

**IN WITNESS WHEREOF**, the parties hereby agree to the terms and conditions of this contract as stated above

Whidbey Island Marathon,  
City of Oak Harbor (**RACE**) **approval:**

AA Sports, Ltd. **approval:**

Signature:

Signature:

\_\_\_\_\_  
Tamra Sipes

*Jon C Atherton*  
Jon C. Atherton

Date: \_\_\_\_\_

Date: 11/5/13

Whidbey Island Marathon  
City of Oak Harbor  
865 SE Barrington Drive  
Oak Harbor, WA 98277  
Email: [WhidbeyMarketing@comcast.net](mailto:WhidbeyMarketing@comcast.net)  
Website: [www.whidbeyislandmarathon.com](http://www.whidbeyislandmarathon.com)  
Cell Phone: 360.914.0800

AA Sports, Ltd.  
4836 SW Western Ave.  
Beaverton, OR 97005  
Website: [www.aasportsltd.com](http://www.aasportsltd.com)  
Email: [jon@aasportsltd.com](mailto:jon@aasportsltd.com)  
Office Phone: 503.531.3140  
Cell Phone: 503.804.4737

## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 7<sup>th</sup> day of January 2014, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and AA SPORTS, LTD., hereinafter referred to as the "SERVICE PROVIDER".

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the SERVICE PROVIDER represents the SERVICE PROVIDER is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, the parties hereto agree as follows:

1. Scope of Services.

The SERVICE PROVIDER shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as SERVICE PROVIDER responsibilities throughout this Agreement and as detailed in Exhibit "A" attached hereto and incorporated herein (the "Project").

2. Term.

The Project shall begin on **April 12, 2014** and shall be completed **April 13, 2014** unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

3.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY.

3.2 No payment shall be made for any service rendered by the SERVICE PROVIDER except for services identified and set forth in this Agreement.

3.3 The CITY shall pay the SERVICE PROVIDER for work performed under this Agreement as follows: submitted invoice for costs incurred by the itemized amount as outlined in Exhibit "A" (Scope of Work). Total payment amount is estimated to be **\$10,560.00** based on 2,500 runners. Written approval by the City Administrator is required if the payment amount exceeds this amount.

4. Reports and Inspections.

- 4.1 The SERVICE PROVIDER at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.
- 4.2 The SERVICE PROVIDER shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the SERVICE PROVIDER'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the SERVICE PROVIDER'S activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

- 5.1 The parties intend that an independent contractor relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the SERVICE PROVIDER. No agent, employee, servant or representative of the SERVICE PROVIDER shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the SERVICE PROVIDER are not entitled to any of the benefits the CITY provides for its employees. The SERVICE PROVIDER will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.
- 5.2 In the performance of the services herein contemplated, the SERVICE PROVIDER is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

6. Service Provider Employees/agents.

The CITY may at its sole discretion require the SERVICE PROVIDER to remove an employee(s), agent(s) or servant(s) from employment on this Project. The SERVICE PROVIDER may, however, employ that (those) individual(s) on other non-CITY related projects.

7. Hold Harmless/Indemnification.

- 7.1 SERVICE PROVIDER shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the SERVICE PROVIDER in performance of this Agreement, except for injuries and damages caused by the sole negligence of the CITY.
- 7.2 For purposes of this indemnification and hold harmless agreement, the SERVICE PROVIDER waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated.
- 7.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

8. Insurance.

The SERVICE PROVIDER shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, its agents, representatives, or employees.

- 8.1 Minimum Scope of Insurance. SERVICE PROVIDER shall obtain insurance of the types described below:
- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
  - b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The CITY shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the CITY.
  - c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
  - d. Professional Liability Insurance appropriate to the SERVICE PROVIDER'S profession.

- 8.2 Minimum Amounts of Insurance. SERVICE PROVIDER shall maintain the following insurance limits:
- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.
  - b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate.
- 8.3 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:
- a. The SERVICE PROVIDER'S insurance coverage shall be primary insurance with respect to the CITY. Any insurance, self-insurance, or insurance pool coverage maintained by the CITY shall be excess of the SERVICE PROVIDER'S insurance and shall not contribute with it.
  - b. The SERVICE PROVIDER'S insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.
- 8.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- 8.5 Verification of Coverage. SERVICE PROVIDER shall furnish the CITY with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the SERVICE PROVIDER before commencement of the work.

9. Treatment of Assets.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the SERVICE PROVIDER pursuant to this Agreement.

10. Compliance with Laws.

- 10.1 The SERVICE PROVIDER, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.

10.2 The SERVICE PROVIDER specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. Nondiscrimination.

11.1 The CITY is an equal opportunity employer.

11.2 Nondiscrimination in Employment. In the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The SERVICE PROVIDER shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The SERVICE PROVIDER shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

11.3 Nondiscrimination in Services. The SERVICE PROVIDER will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

11.4 If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The SERVICE PROVIDER shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. Assignment/subcontracting.

- 12.1 The SERVICE PROVIDER shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the SERVICE PROVIDER not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.
- 12.2 Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.
- 12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. Changes.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

14. Maintenance and Inspection of Records.

- 14.1 The SERVICE PROVIDER shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.
- 14.2 The SERVICE PROVIDER shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The SERVICE PROVIDER agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. Other Provisions.

The following additional terms shall apply: It is agreed between the parties that pursuant to changes in state law necessitating that services hereunder be expanded, the parties shall negotiate an appropriate amendment. If after thirty (30) days of negotiation, agreement

cannot be reached, the CITY may terminate this Agreement no sooner than sixty (60) days thereafter.

16. Termination.

16.1 Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by giving thirty (30) days' written notice to the SERVICE PROVIDER. Upon such termination for convenience, the CITY shall pay the SERVICE PROVIDER for all services provided under this Agreement through the date of termination.

16.2 Termination for Cause. If the SERVICE PROVIDER fails to perform in the manner called for in this Agreement, or if the SERVICE PROVIDER fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days' written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the SERVICE PROVIDER setting forth the manner in which the SERVICE PROVIDER is in default. The SERVICE PROVIDER will only be paid for services performed in accordance with the manner of performance set forth in this Agreement through the date of termination.

17. Notice.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

18. Attorneys Fees and Costs.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

19. Jurisdiction and Venue.

19.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

19.2 Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.

20. Severability.

20.1 If, for any reason, any part, term or provision of this Agreement is held by a court

of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

20.2 If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision that may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

21. Entire Agreement.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute a material breach of contract and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:

CITY OF OAK HARBOR  
865 SE Barrington Drive  
Oak Harbor, WA 98277

SERVICE PROVIDER:

AA Sports, Ltd.  
4836 SW Western Avenue  
Beaverton, Oregon 97005

\_\_\_\_\_  
Scott Dudley, Mayor

*Jon C Atherton*

Jon Atherton, Vice President of Operations

Attest:

\_\_\_\_\_  
Anna Thompson, Interim City Clerk

# City of Oak Harbor City Council Agenda Bill

**Bill No.** C/A 4.d.  
**Date:** January 7, 2014  
**Subject:** Oak Harbor Youth Commission  
Appointment–Otto Haffner

**FROM:** Scott Dudley, Mayor 

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

ML Larry Cort, City Administrator  
\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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## **PURPOSE**

The purpose of this agenda bill is for the Council to confirm Mayor Dudley's appointment of Otto Haffner to the Oak Harbor Youth Commission.

## **FISCAL IMPACT DESCRIPTION**

None

## **SUMMARY STATEMENT**

If confirmed, Mr. Haffner would be appointed for a full 3 year term on the Youth Commission. This term would expire January 2017.

Mayor Dudley recommends that Otto Haffner be confirmed to serve a full term.

## **STANDING COMMITTEE REPORT**

None.

## **RECOMMENDED ACTION**

Confirm Otto Haffner's appointment to the Oak Harbor Youth Commission.

## **ATTACHMENTS**

Mr. Haffner's biography.

## Biography Form

Recommended Board Appointment for: Oak Harbor Youth Commission Member

Name: Otto Haffner Date: 21/Nov/13

Address: 1155 SW Kalama Lp

City, State, Zip: Oak Harbor, WA, 98277

Telephone Number: 360-929-6809 Email Address: ohaffner@oakharbor.org

Mailing Address (if different from above): \_\_\_\_\_

Resident of Oak Harbor/Whidbey Island for: 9 yrs.

Occupation and Place of Employment (if retired, reference previous occupation):

Firefighter/EMT @ OHFD

Local Group or Civic Affiliations: Oak Harbor Fire Department

Special Interests:

Other General Comments:

I am a 10 yr veteran of the Navy and I have a B.S.B.A from Columbia College. I have been a career fire fighter for the city for almost a year now, paid on call fire fighter for two years prior to getting hired on. I am interested in humanitarian and relief efforts abroad and also am interested in becoming more involved helping my local community beyond just the fire house.

**City of Oak Harbor  
City Council Agenda Bill**

Bill No. C/A 4.e.  
Date: January 7, 2014  
Subject: Approval of Inter local  
with Whatcom County Sheriff's  
Office – Mini Chain Services

**FROM:** Edgar J. Green, Chief of Police

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

The Oak Harbor Police Department participates with the Whatcom County Sheriff's Office and utilizes their "Mini-Chain". We are dependent upon on this group to facilitate the pickup and movement of prisoners who are arrested on City of Oak Harbor warrants outside of the City of Oak Harbor boundaries.

**FISCAL IMPACT DESCRIPTION** - Cost: \$1,779.00

The service is not free, but this is a more economical and reasonable approach then sending department personnel to do a job that the Whatcom County Sheriff's Office is already doing. The billing is based on past years use by our department. Whatcom County takes the total number of prisoners that were moved on our behalf and determines what percentage of the prisoners that represents and charges us accordingly. For 2013 the Whatcom County Sheriff's Office conceded they were late in getting out the new Inter Local agreements, partly because of new rates and other adjustments to the program. But rather than make people pay the "new anticipated rate" mid budget cycle, the Whatcom County Sheriff (Bill Elfo) opted to charge the participants at the 2012 rates. The new rates will be instituted in 2014.

There is no need for any special funding; this expense was anticipated in the 2013-2014 budgets.

**SUMMARY STATEMENT**

If an individual is picked up in Snohomish County, the Whatcom County Sheriff's Officer will pick up this prisoner for us and transport them to a mutually agreed upon location closer to the City where our corrections folks will then pick up the prisoner and transport them to our jail. This saves a significant amount of time, expense and manpower (for safety most transports are done with two corrections officers).

**RECOMMENDED ACTION**

Authorize the Mayor to sign the Interlocal Agreement with the Whatcom County Sheriff's Office allowing the Oak Harbor Police Department to use the service.

**ATTACHMENTS**

Letter from Whatcom County Sheriff's Office  
Copy of Interlocal Agreement

**WHATCOM COUNTY  
SHERIFF'S OFFICE**

**BILL ELFO**  
SHERIFF

PUBLIC SAFETY BUILDING  
311 Grand Avenue  
Bellingham, WA 98225-4078  
(360) 676-6650



**JEFF PARKS**  
UNDERSHERIFF  
**ART EDGE**  
CHIEF DEPUTY  
**DOUG CHADWICK**  
CHIEF DEPUTY  
**STEVE COOLEY**  
CHIEF INSPECTOR  
**WENDY JONES**  
CHIEF OF CORRECTIONS

December 11, 2013

Oak Harbor Police Department  
Attn: Martha Folsom  
860 SE Barrington Dr.  
Oak Harbor, WA 98277

Dear Martha:

Enclosed please find two originals of the 2014 Interlocal Northwest Minichain Agreement between Oak Harbor and Whatcom County. Also enclosed is a breakdown of costs for the Northwest Minichain.

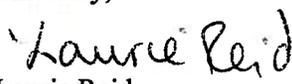
Please have both originals signed where indicated and return both originals back to me at the following address:

Whatcom County Sheriff's Office/Corrections  
Attn: Laurie Reid, Administrative Coordinator  
311 Grand Ave.  
Bellingham, WA 98225

Once the signing process is complete on our end, I will return a fully executed original to you.

Thank you.

Sincerely,

  
Laurie Reid  
Jail Administrative Coordinator

Enc. (3)

**WHATCOM COUNTY**  
**NW Minichain Per Diem**  
**Based on Budget Year 2014**

<b>EXPENDITURES</b>		
<b>Operating Expenditures</b>		
Salary & Benefits (Exhibit A)	\$	100,641
Overtime		10,000
Small Tools		200
Telephone		600
Fuel		16,200
Equipment Rental (Exhibit B)		25,200
Admin Cost Allocation (Exhibit C)		6,835
Insurance Premiums (Exhibit D)		3,801
Equipment (Exhibit E)		2,011
<b>Total Operating Expenditures</b>	<b>\$</b>	<b><u>165,487</u></b>
<b>Jail Administration</b>		
Jail Administration Labor (Exhibit F)	\$	3,054
<b>Total Jail Administration</b>	<b>\$</b>	<b><u>3,054</u></b>
<b>TOTAL EXPENDITURES</b>	<b>\$</b>	<b><u>168,541</u></b>
<b>Less: Revenue from DOC</b>		
<b>TOTAL ADJUSTED EXPENDITURES</b>	<b>\$</b>	<b><u>168,541</u></b>
<b>NW MINICHAIN PER DIEM</b>		<b><u>\$ 194</u></b>
Number of Inmates Transported per Year:*		870

\*Estimate based on actual inmates transported from 07/12-06/13.

Agencies	Total Inmates Transported	Percentage Share	Total Amount
Island	152	17.47%	\$ 29,444
Oak Harbor	8	0.92%	\$ 1,551
Skagit*	443	53.05%	\$ 89,411
Shared(Western)	37	0.00%	\$ -
Whatcom*	215	26.84%	\$ 45,236
	<b>855</b>	<b>98.28%</b>	<b>\$ 165,642</b>
US Marshals	15	1.72%	**
	<b>870</b>	<b>100.00%</b>	

\*Agencies share Western equally.

\*\*US Marshals have a separate contract.

**INTERLOCAL COOPERATIVE AGREEMENT  
NORTHWEST MINICHAIN WITH THE CITY OF OAK HARBOR**

THIS AGREEMENT is made and entered into by and between the City of Oak Harbor, Washington ("The City of Oak Harbor") and Whatcom County, Washington ("County") pursuant to the authority granted by Chapter 39.34 RCW, INTERLOCAL COOPERATION ACT.

**1. PURPOSE**

The purpose of this agreement is to provide for transportation services for prisoners for The City of Oak Harbor for a period beginning on the First day of January, 2014 and ending on the Thirty-first day of December, 2014. The City of Oak Harbor and Whatcom County agree to the terms and conditions incorporated herein.

**2. RESPONSIBILITIES:**

Prior to signing this agreement, the City of Oak Harbor has determined that there exists a public need for the services to be provided hereunder, and that it is appropriate that public funds be expended to meet this need.

The City of Oak Harbor acknowledges Whatcom County's operational control of its jail facilities and agrees that prisoners transported on the Northwest Mini-Chain van by Whatcom County will be subject to Whatcom County Jail policies and procedures.

Whatcom County covenants to perform the following transportation services:

- a) To pick up inmates from any Northwest Mini-Chain contracted city or county jail along the I-5 corridor, with King County Jail being the southernmost point.
- b) The City of Oak Harbor will insure that its inmates are transported to Skagit County at their own cost and will be responsible to insure that the inmates are at Skagit County prior to Whatcom County's arrival for pickup. Whatcom County will transport the City of Oak Harbor inmates south to King County.
- c) Provide driver and vehicle to accomplish above transportation services. Schedules will be set up in advance by telephone.

**3. TERM OF AGREEMENT:**

The term of this Agreement shall be from January 1, 2014 through December 31, 2014, regardless of date of signature.

The term of this agreement shall be subject to review and revision in September of 2014 for renewal in January 2015.

**4. MANNER OF FINANCING:**

Funds for the payment of services to be rendered under this Agreement have been budgeted, allocated and are available for this purpose. This agreement shall not obligate the City of Oak Harbor in excess of the balance of funds available for this purpose, nor shall it obligate Whatcom County to perform services which are not budgeted. The source of funds is the City of Oak Harbor budget.

Whatcom County shall provide The City of Oak Harbor with an invoice for services rendered on a quarterly basis. The Contract Number, set forth above, shall be included on all billings or correspondence in connection therewith.

This compensation is calculated on the actual percentage of usage by The City of Oak Harbor of the total cost of the Northwest Mini-Chain Transport System, and as such will not require a quarterly breakdown of actual transports.

Annual Compensation:        \$1,551.00

Quarterly Invoices:

March 31, 2013	\$387.75
June 30, 2013	\$387.75
September 30, 2013	\$387.75
December 31, 2013	\$387.75

5. ADMINISTRATION: The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under or greater than this Agreement. In the event such representatives are changed, the party making the change shall notify the other party.

- 5.1 The County's representatives shall be Whatcom County Executive Jack Louws, and Sheriff Bill Elfo
- 5.2 The City of Oak Harbor's representative shall be Captain Tim Sterkel.

6. TREATMENT OF ASSETS AND PROPERTY: No fixed assets or personal or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.

7. INDEMNIFICATION: Each party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions or those of their officials, officers, agents, or employees to the fullest extent required by law, and further agrees to save, indemnify, defend, and hold the other party harmless from any such liability. It is further provided that no liability shall attach to the County by reason of entering into this contract except as expressly provided herein.

8. TERMINATION: Any party hereto may terminate this Agreement upon thirty (30) days notice in writing either personally delivered or mailed postage-prepaid by certified mail, return receipt requested, to the party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

9. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS: The Agreement may be changed, modified, amended or waived only by written agreement executed by the



**WHATCOM COUNTY:**

Recommended for Approval:

Bill Elfo, Sheriff For, 12/10/13  
Date

**Approved as to form:**

Elizabeth Gallery 12/11/13  
Elizabeth Gallery, Civil Deputy Date  
Prosecuting Attorney

**Approved:**

Accepted for Whatcom County:

By: \_\_\_\_\_  
Jack Louws, Whatcom County Executive

STATE OF WASHINGTON )  
 ) Ss  
COUNTY OF WHATCOM )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_, before me personally appeared Jack Louws, to me known to be the Executive of Whatcom County, who executed the above instrument and who acknowledged to me the act of signing and sealing thereof.

\_\_\_\_\_  
NOTARY PUBLIC in and for the State of Washington, residing at  
\_\_\_\_\_. My commission expires \_\_\_\_\_.

**CONTRACTOR INFORMATION:**

The City of Oak Harbor

Address:  
860 SE Barrington Drive  
Oak Harbor, WA 98277

Contact Name: Captain Tim Sterkel  
Contact Phone: 360.279.4617  
Contact FAX: 360.279.4609  
Contact Email: [tsterkel@cob.oakharbor.org](mailto:tsterkel@cob.oakharbor.org)

**City of Oak Harbor  
City Council Agenda Bill**

Bill No. C/A 4.f.  
Date: January 7, 2014  
Subject: Request For Qualifications (RFQ) –  
Professional Engineering Services for  
Liszak Outfall

**FROM: Cathy Rosen, Public Works Director  
Joe Stowell, City Engineer**

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

The purpose of this agenda bill is to seek City Council's approval to advertise for professional engineering services in connection with a stormwater outfall project on Ann Liszak's property on Scenic Heights Road.

**FISCAL IMPACT DESCRIPTION**

Funds Required: \$500 (Advertising)  
Appropriation Source: Stormwater Fund

**SUMMARY STATEMENT**

The City has been in communication with Mrs. Liszak for several years regarding storm drainage through her property which is reportedly causing erosion to the shoreline bluff. Currently, stormwater from the Eagle Crest area outfalls at the top of the bluff; this project would tight line the water to an outfall at the shoreline. The goal of this project is to reduce the threat of erosion on private property caused by city stormwater.

Design and Archaeology costs are estimated at approximately \$45,000 and Construction cost is estimated at \$110,000.

**STANDING COMMITTEE REPORT**

N/A

**RECOMMENDED ACTION**

Authorize the Engineering Department to advertise for consultants as outlined in the attached RFQ.

**ATTACHMENTS**

Liszak Detailed RFQ

## CITY OF OAK HARBOR – DETAILED REQUEST FOR QUALIFICATION FOR ENGINEERING SERVICES

The City of Oak Harbor is requesting statements of qualifications from qualified consulting firms for permitting and design of a stormwater drainage improvement project.

The project consists of modification and extension of an existing 15” storm drain system including a new outfall over a residential shoreline bluff. The outfall will be located near SW 29<sup>th</sup> PL and SW Scenic Heights St in Oak Harbor. Currently, the stormwater from Scenic Heights to the bluff is primarily surface drained and may be a contributing factor in erosion of the bluff. The anticipated project will pipe the stormwater from Scenic Heights over the bluff and down to the shoreline. The project may also involve reconstructing portions of the existing storm drain under 29<sup>th</sup> or Scenic Heights.

The scope of services will likely include, but may not be limited to, the following items:

1. Obtain any necessary updates to the existing survey (attached) and establish utility easements,
2. Apply for and obtain all necessary environmental permits,
3. Provide geotechnical services in connection with permit requirements,
4. Verify hydrology and hydraulic assumptions related to the outfall,
5. Design the drainage improvements and create complete bid documents,
6. Coordinate bid documents with archaeology parameters (professional archaeology services are not a part of this RFQ),
7. Develop construction cost estimates at various design stages,
8. Provide assistance during bidding and construction administration.

The most highly qualified consultant will be selected based on a combination of the following criteria:

1. Experience with similar projects in the Region,
2. The firm’s geographic proximity to the project location,
3. Experience with the local and state permitting process,
4. References and/or letters of recommendation,
5. Experience of key staff that would be assigned to the project,
6. Availability of staff resources to meet the City’s goal of constructing the project in 2014.

The City may at their discretion select a consultant based solely on an evaluation of the consultants Statement of Qualifications (SOQ). Alternatively, one or more consultants may be invited for an interview to further evaluate the firm’s capabilities prior to selection.

Additional project questions may be directed to the Project Engineer at (360) 279-4778 or [jpiccone@oakharbor.org](mailto:jpiccone@oakharbor.org). Interested parties should submit a letter of interest and their (SOQ) to the City of Oak Harbor Engineering Dept., C/O John Piccone, P.E. Project Engineer, 865 SE Barrington Drive, Oak Harbor, WA 98277. SOQ’s are requested no later than 4:00 PM on **January XX**. Minority and women-owned businesses are encouraged to submit an SOQ.

# City of Oak Harbor City Council Agenda Bill

Bill No. 6.a.  
Date: January 7, 2014  
Subject: 2014 Lodging Tax Grant  
Program Recommendations

**FROM:** Doug Merriman, Finance Director

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

A resolution to award recommendations from the Lodging Tax Advisory Committee (LTAC) for the 2014 Lodging Tax Grant Program.

**SUMMARY STATEMENT**

The City of Oak Harbor sponsors an annual grant program funded by revenues from 2% lodging tax proceeds, more commonly known as the Lodging Tax Grant Program. Organizations are encouraged to apply for funding if they feel that their activity promotes tourism in a manner that attracts visitors to Oak Harbor from other localities. The Lodging Tax Advisory Committee met on December 19, 2013 after City Council approved beginning the 45-day review period during Council's August 7, 2013 regular meeting.

**Total Requests**

North Whidbey Car Show - Lions Club	\$5,000
2014 Whidbey Marathon - City of Oak Harbor	8,000
Driftwood Day - Oak Harbor Arts Commission	4,090
Marketing Program - PBY Foundation	5,600
Branding and Marketing Program - Chamber of Commerce	30,000
Adrenaline Rush Hydro Races - MAC Events and Promotions	10,000
Oak Harbor Music Festival - Oak Harbor Music Festival	18,400
Advertising Brochure - Downtown Merchants	6,000
	<u>\$87,090</u>

**Total Awarded (\$25,000 available)**

North Whidbey Car Show - Lions Club	\$3,000
2014 Whidbey Marathon - City of Oak Harbor	5,000
Driftwood Day - Oak Harbor Arts Commission	1,000
Marketing Program - PBY Foundation	1,000
Branding and Marketing Program - Chamber of Commerce	1,000
Adrenaline Rush Hydro Races - MAC Events and Promotions	5,000
Oak Harbor Music Festival - Oak Harbor Music Festival	8,000
Advertising Brochure - Downtown Merchants	1,000
	<u>\$25,000</u>

Under state law, applicants for lodging tax funding from a city with a population of 5,000 or more must now submit their applications (which must include the estimates listed above) to the city lodging tax advisory committee (LTAC). The LTAC must select the candidates for funding from these applicants and provide a list of the candidates and recommended amounts of funding to the city for final determination. The city council may choose to make awards *using the recommended amounts* to all, some, or none of the candidates on this list.

The advisory committee submits these recommendations to City Council with the following comments regarding their analysis of the applications. The LTAC reviewed each application noting the scope of the proposal, the applicability of each application for the promotion of tourism, and the probably impact of each program to increase the the number of people visiting Oak Harbor. These would be visitors traveling for business or pleasure on a trip either away from their place of residence or business and staying overnight in paid accommodations, to a place fifty miles or more one way from their place of residence or business for the day or staying overnight, or from another country or state outside of their place of residence or their business. Critical to this recommendation is the Committee's feeling that funding has been allocated to the applications based on the potential effect the event or program has on increasing stays in local motels/hotels, thereby increasing the future lodging tax revenues needed to ensure the sustainability of the lodging tax funds.

#### **RECOMMENDED ACTION**

Adopt Resolution 14-03 awarding the 2014 Lodging Tax Grants.

#### **ATTACHMENTS**

Resolution 14-03

**RESOLUTION NO. 14-03**

**A RESOLUTION OF THE CITY OF OAK HARBOR, WASHINGTON, ACCEPTING THE RECOMMENDATIONS OF THE LODGING TAX ADVISORY COMMITTEE FOR FUNDING THE 2014 LODGING TAX GRANT PROGRAM**

WHEREAS, the City of Oak Harbor has imposed both the “basic” hotel-motel tax of 2% (RCW 67.28.180) and the additional lodging tax of 2% (RCW 67.28.181) upon the sale of, or change made for the furnishing of lodging; and

WHEREAS, cities with a population of 5,000 or more must establish a lodging tax advisory committee to ensure that interested parties have a forum for debating the merits of a proposed imposition of a lodging tax, proposed increase in a lodging tax rate, proposed removal of a tax exemption, or a proposed “change in use” of tax revenues. Proposals for change must be submitted to the lodging tax advisory committee for review and comment at least 45 days prior to taking action on the proposal; and

WHEREAS, the City Council of the City of Oak Harbor referred the proposed change in use of lodging funds for the 2014 Lodging Tax Grant Program to the Lodging Tax Advisory Committee on August 7, 2013; and

WHEREAS, the Lodging Tax Advisory Committee reviewed the applications submitted and hereby makes the following recommendations for funding to the City Council:

North Whidbey Car Show - Lions Club	\$3,000
2014 Whidbey Marathon - City of Oak Harbor	5,000
Driftwood Day - Oak Harbor Arts Commission	1,000
Marketing Program - PBY Foundation	1,000
Branding and Marketing Program - Chamber of Commerce	1,000
Adrenaline Rush Hydro Races - MAC Events and Promotions	5,000
Oak Harbor Music Festival - Oak Harbor Music Festival	8,000
Advertising Brochure - Downtown Merchants	1,000
TOTAL	<u>\$25,000</u>

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Oak Harbor accepts the recommendations of the Lodging Tax Advisory Committee to award lodging tax funding to the listed applicants for the amounts as shown.

PASSED by the City Council this 7th day of January 2014.

CITY OF OAK HARBOR

ATTEST:

\_\_\_\_\_  
SCOTT DUDLEY, MAYOR

\_\_\_\_\_  
Anna Thompson, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Grant Weed, Interim City Attorney

**City of Oak Harbor  
City Council Agenda Bill**

Bill No. 6.b.  
Date: January 7, 2014  
Subject: Resolution 14-02 Adjustment to  
Position Classification Plan

**FROM:** Doug Merriman, Finance Director 

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

A resolution to adjust the City's Position Classification Plan for those classifications determined to be compensated an under-market salary as reflected in the 2013 Salary Survey.

**SUMMARY STATEMENT**

The City of Oak Harbor Employee Policy Manual Section 4.09 establishes the policy of the City to pay salaries reflecting the market for each classification and that are commensurate with the compensation paid for similar positions at comparable municipal governments. During 2013, the Human Resources Department performed a survey of comparable cities to determine if non-represented classifications on the City's Position Classification Plan meeting these two policy objectives.

The result of the survey found a number of classifications where the current salary range falls below the determined market average. Accordingly, a resolution is being introduced to adjust the Position Classification Plan range for these classifications to the nearest plan range equivalent to the determine market average.

**RECOMMENDED ACTION**

1. Adopt Resolution 14-02.

**ATTACHMENTS**

1. Resolution 14-02

**MAYOR'S COMMENTS**

**NOTE:** The attachment listing the positions due for adjustment will be provided in Council mailboxes by the end of the week.

**RESOLUTION NO. 14-02**

A RESOLUTION OF THE CITY OF OAK HARBOR COUNCIL TO PROVIDE A MARKET RATE SALARY ADJUSTMENT TO CERTAIN NON-REPRESENTED CLASSIFICATIONS THAT WERE DETERMINED TO BE PAID UNDER-MARKET BY THE 2013 SALARY SURVEY.

WHEREAS, in order for the City to remain competitive in the employment market place and to ensure the City's Position Classification Plan is internally equitable, Section 4.09 of the Employee Policy Manual establishes the policy of the City to pay salaries that reflect the market for each classification and that are commensurate with the compensation paid at comparable municipal governments; and

WHEREAS, the Human Resources Department performed a salary survey of comparable cities during 2013 for non-represented classifications to determine if the current Position Classification Plan meets the City's stated policy objective; and

WHEREAS, the 2013 salary survey determined that the salary of certain non-represented classifications were below the average of the salaries paid for similar classifications at comparable municipal governments; and

**NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:**

- 1) A market rate salary adjustment is hereby authorized and approved for those non-represented classifications determined to be below market-rate by the 2013 salary survey.
- 2) The Position Classification Plan Range of those classifications determined to be below market-rate shall be adjusted to the nearest applicable Plan Range.
- 3) Should the proposed classification range fall between any two existing ranges of the current Position Classification Plan, the proposed range shall be adjusted up or down to coincide with the nearest range. Any proposed range falling at the exact mid-point of two existing ranges shall be adjusted to the higher of the two bracketing ranges.
- 4) The classifications requiring a market rate salary adjustment are listed on Attachment A to this resolution.
- 5) The Plan Range Adjustment shall be effective January 1, 2014.

PASSED by the City Council this 7th day of January 2014.

CITY OF OAK HARBOR

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SCOTT DUDLEY, MAYOR

ATTEST:

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Valerie J. Loffler, City Clerk

APPROVED AS TO FORM:

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Grant Weed, Interim City Attorney

**City of Oak Harbor  
City Council Agenda Bill**

Bill No. 7.a.  
Date: 01-07-2014  
Subject: Public Hearing – Nightclub  
License Application – Hookah Lounge

**FROM:** Edgar J. Green, Chief of Police

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE:**

This is an application for a Nightclub License pursuant to Ch. 5.22 OHMC. The applicants are Charles Morgan and James Ryan. Since no disqualifying restrictions prevent the issuance of a Nightclub License to the applicant, the City Council needs to hold a public hearing to determine what conditions should be imposed to mitigate noise, traffic and other similar public health and safety impacts on operation of the Hookah Lounge Nightclub.

**SUMMARY STATEMENT**

On November 4, 2013 Charles Morgan and James Ryan applied for and received a temporary nightclub license (OHMC 5.22.040). Pursuant to the requirements in OHMC 5.22.045 I have conducted an investigation to determine the possible impacts of a nightclub located at the Hookah Lounge; that completed investigation is attached.

**RECOMMENDED ACTION**

1. Hold a public hearing pursuant to OHMC 5.22.045(4).
2. Motion to approve the nightclub license for the Hookah Lounge subject to the Conditions of Approval.

**ATTACHMENTS:**

1. Investigative Report
2. Ordinance 1672
3. Proposed Conditions



**POLICE DEPARTMENT**

**Scott Dudley, Mayor**  
Edgar J. Green, Chief of Police

860 SE Barrington Drive • Oak Harbor WA • (360) 279-4600 • FAX (360) 279-4609

**November 13, 2013**

**City Council  
City of Oak Harbor  
865 SE Barrington Dr  
Oak Harbor, WA 98277**

**RE: Hookah Lounge Nightclub Application Report  
1090 SE Pioneer Way, Oak Harbor, WA**

**Submission Date: November 4, 2013  
Investigation Completion Date: November 13, 2013**

**Council members,**

**Pursuant to the requirements in Oak Harbor Municipal Code 5.22.045 ,I have conducted an investigation to determine the possible impacts of a nightclub located at the Hookah Lounge.**

**The Hookah Lounge may fit the definition of a nightclub because it has, or would like to have, music beyond 10:00 PM and serves consumables such as Mu'assel, a syrup flavored tobacco type derivative, as well as alcohol (OHMC 5.22.010[1]).**

**In investigating the feasibility of a nightclub at a specific location, the code directs the police department to look at noise, traffic, public health, and safety issues and to make recommendations with regard to conditions (OHMC 5.22.045).**

**The Hookah Lounge is in a building that is located on the northwest corner of SE Pioneer Way and Midway Bl. It is a two story building with two businesses (store fronts) on the ground floor facing south towards SE Pioneer Way, one of which is the Hookah Lounge, and two apartments located directly above the two businesses. It is a wooden structure recently remodeled and painted tan in color with white trim (see attached photo).**

**The Hookah Lounge resembles a small neighborhood coffee shop with its soft lighting and decor. It does not have a stage area, nor does it have a dance floor. The interior has a counter in the northwest corner and the remainder of the establishment consists of**

couches with a small amount of room in the southwest corner dedicated to a sound board for a disc jockey or a performer.

On November 7 , 2013 at 6:00 PM Oak Harbor Fire Chief Ray Merrill, Deputy Fire Chief Mike Buxton, Building Official Dave Anderson and I met with the owners, Charles Morgan and James Ryan, at the lounge to discuss our concerns.

For ease of reading I have divided this report into the respective areas of concern; noise, traffic, public health, and safety issues.

**Noise:**

There is a concern about keeping the noise inside the establishment and not causing a disruption to the adjacent business location or the two apartments above the location (per OHMC 6.56.030 [b]). The building is not built with any sound deadening or sound canceling attributes, which will mean anything beyond a quiet ensemble may be heard in the neighboring parts of the building. The installation of any sound deadening materials will have to meet specifications set by the Oak Harbor Fire Department and the City Building Official.

In discussing these concerns with the owners (Charles Morgan and James Ryan), I learned that they have had music in the past and, from their perspective, it has not been an issue. They said that their neighbors rarely complained (which I confirmed) and that the only reason they had applied for the license was to ensure compliance with the changed nightclub code. Charles and James said they want to allow a disc jockey or musicians to play late into the evening past 10:00 PM.

*Recommendation:* Limit the music to what you would normally see inside a small coffee shop; soft stereo music. If it is live, one or two amplified guitars, no drums or percussion instruments, no stages. All the windows and the front door of the establishment stay closed during any performance or the playing of any music.

**Traffic/Parking:**

This is a fairly busy intersection, with the majority of the traffic passing the location traveling east on SE Pioneer Way. There are two access points to the parking lot; one on SE Pioneer Way and another on Midway Blvd.

Designated parking for this particular business is very limited. There appears to be five (5) or six (6) spaces that are directly in front of this establishment. There are other parking spaces in the same lot, but the lot is shared with adjacent businesses. (My Fathers Community Thrift / 1036 SE Pioneer Way; Dentist Office 1090 SE Pioneer Way, Ste. #102). The owners of the thrift store business have said that they will work to

preserve these spaces for their customers if they are open at the same time as the Hookah Lounge.

The dentist office will be closed during the times that the Hookah Lounge is open.

There are other options for parking, including street parking on SE Pioneer Way, east and west of this location. There is also some space to the rear (north) of this location in an alley that can be used for parking, but this should be discouraged because parking here is designed for the tenants of the apartments above the lounge and another adjacent business. Any additional parking may limit fire department access in the event of an emergency.

Recommendation: Access to and from the City Street is adequate. The limited numbers of spaces may be detrimental to the business if they are open at the same time as the adjacent businesses. However, the application specifically says that they will be open from 7:00 PM to 1:00 AM. The adjacent businesses close by 5:00-6:00 PM, with the exception of the neighboring Cross Fit Gym. It stays open later but has parking in the alley north of this location. It is recommended that Council impose a condition that the Hookah cannot have any music until 7:00 PM or later.

#### **Public Health/Safety:**

##### *Public Health*

The Hookah Lounge by its nature allows for indoor smoking, but it is not subject to all of the provisions of the Washington Clean Indoor Act (RCW 70.160). This is in part because the owners do not have any employees who would be subjected to the smoke from the Hookah devices and they are not smoking traditional tobacco. They are smoking Mu'assel a syrup flavored tobacco type derivative.

I was a bit concerned with the recent change in marijuana laws that the owners may allow this to be used inside their business. They both assured me that they would not do this because of their affiliations with the United States Navy and its prohibition on their involvement with marijuana.

Recommendation: There does not appear to be concern at this time with regard to public health, though I cannot vouch for the healthiness of the Mu'assel product, I can say that the smoking of this product does not violate the law and people present are there by choice and are free to leave. No conditions recommended.

##### *Safety*

The location is small storefront type of location. It has a single point of entry and exit on the south side. There are no sprinklers inside the location, but per Dave Anderson, it is

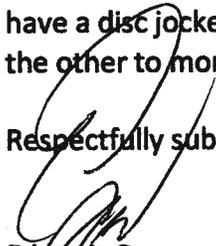
not required. The location size does not warrant sprinklers and the occupancy is limited to 49 people.

The owners have committed to maintaining a small venue where they will have a disc jockey or a single performer or two present. The type of performer could define the clientele in attendance, but based on the environment created by the owners, it appears they are trying to attract a more mature crowd.

There is adequate lighting on the exterior of the building, allowing for officers to observe things happening in the parking lot, as well as inside the business as they drive by.

Recommendation: Allow the owners to operate as they have described with the condition in place that there will always be two employees (owners) working when they have a disc jockey or live musician(s) present; one to monitor the counter and bar and the other to monitor the door and crowd.

Respectfully submitted,



Edgar J. Green  
Chief of Police

**Attachments:**

1. Copy of Nightclub Application
2. Copy of Notice of Liquor License Application
3. Copy of email from Chief Ray Merrill and Building Official Dave Anderson
4. Photos of Establishment
5. Legal Description of Property
6. Letter from Applicants and attached City Council Agenda and Minutes



City of Oak Harbor  
865 SE Barrington Drive  
Oak Harbor, WA 98277  
Phone: (360)279-4500  
Fax: (360)279-4507

**Application for Nightclub License**  
**Oak Harbor Municipal Code Chapter 5.22**  
**Ordinance No.: 1544**

Application Fee: \$200 plus \$10 for WATCH background check = \$210

**Personal Information**

Name of Business: Norse Hooligan Lounge

Address of Business: 1090 SE Pioneer Way Suite 101  
Where nightclub will be conducted.

Owner of Business: James Ryan (Charles) Morgan

Owner's Address: 651 NE Ellis Way D101  
300 N Oak Harbor Street C102

Owner's Phone/Cell Number: 360 420 2720

Date of Birth: 10/10/1989

Social Security No.: 247 83 1307

Driver's License No.: MORGAN112PS

**Please answer the following questions:**

1. Are you a citizen of the United States of America? YES
2. Have you been convicted of a felony within the last five years? NO
3. Have you been convicted of a violation of any federal or state law or city ordinance concerning the manufacture, possession, or sale of liquor subsequent to the passage of the Washington State Liquor Act? NO
4. Have you ever been convicted of a violation of any federal or state law, or city ordinance concerning the manufacture, possession, or sale of narcotics? NO
5. Have you ever forfeited a bond to appear in court to answer charges of any violations as stated above? NO
6. Are you the owner  manager \_\_\_\_\_ or agent \_\_\_\_\_ of this business?

NOTE: Per OHMC Chapter 5.22.030 (2):

No license shall be issued to a person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.

7. Are you a co-partner of this business?

yes

NOTE: Per OHMC Chapter 5.22.030 (3):

No license shall be issued to a co-partnership unless all the members thereof shall be qualified to obtain a license as provided herein.

8. Is this business a corporation?

no

NOTE: Per OHMC Chapter 5.22.030 (4):

No license shall be issued to a corporation, unless all of the officers, directors and stockholders thereof shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head thereof.

9. If this is a partnership or corporation, please include names, addresses, and phone numbers of same. If more space is needed, please attach an additional sheet.

James Ryan 300 N Oak Harbor St ClOZ  
360 689 2905

10. Indicate the type of musical entertainment you will provide.

DJ

11. Describe the hours of operation, expected attendance figures, and activities that will take place on the premises. If more space is needed, please attach an additional sheet.

7pm-1am Between 35-40 patrons @ one time. Drinking  
beer + smoking Hookah

12. Describe the floor plan, parking areas, fire exits, and other physical features of the nightclub. If more space is needed, please attach an additional sheet.

1 exit 1 bathroom 12 couches 1 desk and a backroom

**I do solemnly swear that I have read the City of Oak Harbor's Ordinance No. 1544 regulating nightclub licensing and that I will abide by the rules set forth therein and I furthermore swear that the facts I have stated in this application are true.**

[Signature]  
Signature

30 Oct 2013  
Date

Upon application, you will immediately be issued a temporary license. OHMC 5.22.040. After investigation by City officials, you will be notified of their report and the date upon which the City Council will conduct a hearing for issuance of a regular license. OHMC 5.22.045 sets forth these procedures.

# Background Check Information

<b>DRIVER'S CHECK</b> – Run each state listed on the application and enter state name below.				
STATE <u>WA</u>	STATE _____	STATE _____	STATE _____	STATE _____
<b>VEHICLE REGISTRATION/CHECK STOLEN</b>				
WATCH <input checked="" type="checkbox"/>	WACIC/NCIC <input checked="" type="checkbox"/>	LOCAL RECORDS <input checked="" type="checkbox"/>	<u>No Records</u>	
POLICE DEPT. APPROVAL <u>[Signature]</u>				DATE <u>11-13-13</u>

Received by City Clerk and forwarded to Chief of Police, Oak Harbor Police Department

on: \_\_\_\_\_  
Date \_\_\_\_\_ City Clerk's Signature \_\_\_\_\_

## Oak Harbor Police Department

Date Received: 11-05-13 / 1530 HRS

Attach investigation report and recommendations and any reports requested of other City departments.

## City Council Action

Date: \_\_\_\_\_

Decision/Findings (show below or attach report):

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License Conditions:

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Review Date (if any scheduled):

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PO Box 3000  
Merrifield, VA 22119-3000  
navyfederal.org

68-7497  
2560

Cashier's Check

Serial No. 0433396611	Account No. 0000003037833856	Date 11/04/13	Amount \$*****210.00
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Pay to the Order of

CITY OF OAK HARBOR

Assistant Treasurer

REMITTER:HAZE HOOKAH LOUNGE, LLC

Two Signatures Required for Amounts of \$10,000 and Above

2560749741

280912

1002

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CITY OF OAK HARBOR  
865 SE BARRINGTON DR  
OAK HARBOR, WA 98277-4092  
360-279-4530

\*\*\*\*\*

Reg# #/Rcpt#: 001-00212960 [ MC ]

Accounting Date: Mon, Nov 4, 2013

Date/Time: Mon, Nov 4, 2013 3:51 PM

\*\*\*\*\*

3156/NIGHTCLUB LICENSE

REF#:HAZE HOOKAH LOUNGE

FEE AMOUNT:\$ 210.00

RECEIPT TOTAL = \$ 210.00

\*\*\*\*\*

Payment Data:

Pmt# :1

Payer: HAZE HOOKAH LOUNGE / CHARLES M

RGAN

Method: CK

Ref#: 0433396611

AMOUNT = \$ 210.00

\*\*\*\*\*

RECEIPT SUMMARY

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TOTAL TENDERED = \$ 210.00

RECEIPT TOTAL = \$ 210.00

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CHANGE DUE = \$ 0.00

\*\*\*\*\*

THANK YOU!!

\*\*\*\*\*

v:1.0.3978



NOTICE OF LIQUOR LICENSE APPLICATION

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov
DATE: 10/31/13

SAS

TO: MAYOR OF OAK HARBOR

RE: APPLICATION IN LIEU OF CURRENT PRIVILEGE

UBI: 603-277-488-001-0001
License: 411450 - 3D County: 15
Tradename: HAZE HOOKAH LOUNGE
Loc Addr: 1090 SE PIONEER WAY # 101
OAK HARBOR WA 98277-5732
Mail Addr: 300 N OAK HARBOR ST #C102
OAK HARBOR WA 98277-2167
Phone No.: 360-682-2033 CHARLES MORGAN

APPLICANTS:
HAZE HOOKAH LOUNGE, LLC
MORGAN, CHARLES N
1989-10-10
RYAN, JAMES A
1984-04-12

Privileges Upon Approval:
TAVERN - BEER

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

- 1. Do you approve of applicant ?
2. Do you approve of location ?
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken?
4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based.

DATE SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



Washington State  
Liquor Control Board

■  
■  
January 20, 2014

**ISSUED TO:**

HAZE HOOKAH LOUNGE, LLC  
HAZE HOOKAH LOUNGE  
1090 SE PIONEER WAY # 101  
OAK HARBOR, WA 98277-5732

UBI Number: 603-277-488-001-0001  
Liquor License Number 411450-3D

This temporary permit authorizes you to sell beer at the above location. This Permit is valid only until January 20, 2014. The Permit must be prominently displayed at your premises.

**RCW 66.44.090 prohibits the sale of alcohol without a valid permit or license. You must notify your liquor license investigator 10 days prior to the expiration date. You may request another permit at that time.**

**You are responsible to submit all documents required for this application. Failure to comply may disrupt liquor sales at your premises and cause your application to be administratively closed or denied.**

**ISSUED: November 25, 2013**

**WASHINGTON STATE LIQUOR CONTROL BOARD**

*Sherry Carpenter/ljw*

Liquor License Investigator

Authorized by: Alan Rathbun, Director  
Licensing and Regulation

## Ed Green

---

**From:** David Anderson  
**Sent:** Tuesday, November 05, 2013 4:42 PM  
**To:** Ray Merrill; Ed Green; Steve Powers  
**Cc:** Nikki Esparza; Meg Massey; Larry Cort; Scott Dudley; Mike Buxton  
**Subject:** RE: Hookah Lounge Nightclub Application

Gentlemen,

The current building occupancy classification is a "B" occupancy per the IBC. Section 303.1.1 of the IBC allows smaller buildings and tenant spaces used for assembly purposes with an occupant load of less than 50 persons may be classified as a "B" occupancy. This includes banquet halls, taverns, bars, nightclubs, restaurants, cafeterias and similar dining facilities.

Therefore there is no change in the occupancy classification to require additional exiting or fire protection changes to the building.

If the applicant wishes to increase his occupant load beyond 50 persons the requirements Ray mention would be applicable.

Although the building code does not address the noise issue between the residential and nightclub tenant, I believe this is something that needs to be considered.

*Dave A.*

---

**From:** Ray Merrill  
**Sent:** Tuesday, November 05, 2013 4:21 PM  
**To:** Ed Green; Steve Powers  
**Cc:** Nikki Esparza; David Anderson; Meg Massey; Larry Cort; Scott Dudley; Mike Buxton  
**Subject:** RE: Hookah Lounge Nightclub Application

Greetings

There is the possibility they would have to install a fire sprinkler system. We would need to see some detailed plans and a complete floor layout. I think (and Dave would have to help me on this one) but the occupancy may change from whatever it is now to an A-3 occupancy and in doing so with an R occupancy upstairs it may require a complete fire sprinkler system throughout. As long as the occupancy classification stayed the same as when the building was constructed the spilt use is allowable for years it was an M /B occupancy with the R occupancy on the 2<sup>nd</sup> floor. So there may be some major hoops to jump through

Ray

---

**From:** Ed Green  
**Sent:** Tuesday, November 05, 2013 3:39 PM  
**To:** Steve Powers  
**Cc:** Nikki Esparza; David Anderson; Ray Merrill; Meg Massey; Larry Cort; Scott Dudley  
**Subject:** Hookah Lounge Nightclub Application

Steve –

1080-1098 SE Pioneer Way  
Oak Harbor, WA 98277  
48° 17.377', -122° 38.651'



Imagery ©2013 Google, Map data ©2013 Google 20 m

LOCATION



MOOSE  
LOUNGE



06/18/2013

**1090 SE Pioneer Way, Oak Harbor WA 98277**

**Island County Assessor Ownership Record**

**Account**

Property ID: 333856

Legal Description:

Geographic ID: S7585-00-00023-0

Agent Code:

Type: Real

Tax Area: 100 - City of Oak Harbor

Land Use Code53

Open Space: NDFLN

Historic Property: N

Remodel Property: Y

Multi-Family Redevelopment: N

Township:

Section:

Range:

**Location**

Address: 1055 SE MIDWAY BLVD  
OAK HARBOR, WA 98277

Mapsc0:

Neighborhood:

Cycle 1Map ID: 87

Neighborhood CD: 1

**Owner**

Name: WHIDBEY ISLAND REAL ESTATE, LLC

Owner ID: 254965

Mailing Address:

C/O CHRISTON SKINNER  
791 SE BARRINGTON DRIVE  
OAK HARBOR, WA 98277

Ownership: 100.0000000000%

08NOV13

From: HAZE HOOKAH LOUNGE  
To: OAK HARBOR CITY COUNCIL  
Via: CHIEF ED GREEN

Subj: ADDITIONAL INFORMATION ICO REQUEST FOR "NIGHT CLUB"  
LICENSE

Ref: (a) Oak Harbor City Council Packet Dated 15OCT13

[http://www.oakharbor.org/uploads/documents/3598101513\\_councilpacket.pdf](http://www.oakharbor.org/uploads/documents/3598101513_councilpacket.pdf)

A. In accordance with city ordinance chapter 5.22 "Night Clubs", Haze Hookah Lounge, located at 1090 SE Pioneer Way #101, Oak Harbor, WA falls under the definition of a "Night Club" if playing live music past 10:00 p.m., and is formally requesting a night club license so as to stay in compliance with City Ordinance.

1. The city of Oak Harbor defines "Night Club" as: any "Premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week.
2. "Premises" means any room, place, or space whatsoever in the city of Oak Harbor which is open to the general public in connection with any hotel, restaurant, café, club, tavern or eating place directly or indirectly selling, serving or providing the public liquor, with or without food.
3. "Liquor" means all beverages defined in RCW 66.04.200.

B. Aside from the addition of "bottled only beer sales, Haze Hookah Lounge LLCs business model will not change from its current operations. The general business model is as follows:

1. "Haze Hookah Lounge, LLC currently operates 7:00 p.m. to Midnight on Sundays and Tuesday through Thursday, and from 7:00 p.m. to 1:00 a.m. on Fridays and Saturdays. This will not change and is limited to 1:00 a.m. by our current lease.
2. Current occupancy load is 49. This is limited by our number of exits and will not change.



October 15, 2013

**CITY COUNCIL AGENDA**

6:00 p.m.

**1. CALL TO ORDER**

Invocation/Pledge of Allegiance

**HONORS AND RECOGNITIONS**

Proclamation – Friends of the Library Week

**2. APPROVAL OF AGENDA**

**3. CITIZEN COMMENT PERIOD**

**4. CONSENT AGENDA**

- a. Minutes of the Regular City Council meeting held October 1, 2013
- b. Approval of Accounts Payable Voucher Nos. 155721 through 155724 in the amount of \$950.00; Nos. 155725 through 155735 in the amount of \$1,756.85; and Nos. 155736 through 155913 in the amount of \$1,376,898.53
- c. Resolution 13-23: Authorizing an Interlocal Agreement with the Association of Washington Cities Benefit Trust Creating the Health Care Program Subject to Required Assessments
- d. Motion to authorize the Mayor to sign the Interagency Agreement with the Coupeville School District for 2014 Whidbey Island Marathon volunteers in an amount not to exceed \$1,000.00
- e. Motion to confirm the Mayor's re-appointment of Anne Sullivan to the Library Board for a term to expire December 2018
- f. Motion to confirm the Mayor's re-appointment of Margaret Grunwald to the Library Board for a term to expire December 2017
- g. Motion to authorize the Mayor to sign a Retainer Agreement for Interim City Attorney Services with the firm of Weed, Graafstra and Benson, Inc., beginning on October 16, 2013 and ending on December 31, 2013
- h. Motion to authorize the Mayor to sign a Professional Services Agreement with Equinox Research Consulting International, Inc. for Archaeological Services related to installation of new water mains in the amount of \$35,360.98 and a management reserve of \$2,000.00
- i. Motion to authorize the purchase of 500 roll carts for the Solid Waste Utility in the amount of \$28,000.00

**5. STAFF, MAYOR AND COUNCIL COMMENTS**

- a. City Administrator
- b. Mayor
- c. Councilmembers



October 15, 2013

**CITY COUNCIL AGENDA**

6:00 p.m.

**6. ORDINANCE AND RESOLUTIONS**

- a. Ordinance 1672: Relating to Nightclubs and Amending Chapter 5.22 of the OHMC
- b. Resolution 13-24: Changing the Health Insurance Benefit Plans Available to Eligible Employees and Directing Staff to Implement the Changes

**7. PUBLIC HEARINGS/PUBLIC MEETINGS**

- a. Resolution 13-25: Authorizing the Sale of Vessels for Unpaid Moorage (Public Meeting)
- b. Ordinance 1668: Mid-Biennial Budget Amendment
- c. Ordinance 1673: Adopting the 2014 Property Tax Levy

**8. UNFINISHED BUSINESS**

- a. Chamber of Commerce 2014 Budget Presentation

**9. NEW BUSINESS**

- a. Executive Session – Property Acquisition

**10. ADJOURNMENT**

As a courtesy to Council and the audience, PLEASE TURN YOUR CELL PHONES OFF before the meeting begins. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda.

For scheduled public hearings, if you wish to speak, please sign your name to the sign-up sheet, located in the Council Chambers. The Council will take all information under advisement. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak.

Thank you for participating in your City Government!

To assure disabled persons the opportunity to participate in or benefit from City services, please provide 24-hour advance notice to the City Clerk at (360) 279-4539 for additional arrangements to reasonably accommodate special needs.

Excerpt  
Meeting Minutes of October 15, 2013

**ORDINANCES AND RESOLUTIONS**

Ordinance 1672: Relating to Nightclubs and Amending Chapter 5.22 of the OHMC  
Development Services Director Steve Powers provided the staff report.

Speaking in support was:  
Gray Giordan  
Bill Christian  
Billie Cook

Jennifer Olson spoke in support of a change in the occupancy limit from 300 to 350 for the lounge she wants to open downtown.

Councilmember Hizon and Mr. Powers discussed club size and a related zoning map. Mr. Powers explained a map wouldn't show what size building could be in what zoning district because it's a function of the size of the building and interior space, not based on the building itself.

Mr. Powers clarified the City hasn't yet received an application, and therefore, couldn't speak directly to Ms. Olson's proposed plans.

Councilmember Hizon expressed her support with a change in occupancy so the City didn't preclude Ms. Olson from opening her establishment.

Councilmember Severns and Mr. Powers discussed the occupancy load in the one establishment in the C-5 zone and how the Planning Commission came to their recommendation.

Councilmember Alberg asked Ms. Olson to provide quantitative figures to support the occupant load she's requesting. Mr. Alberg stated he would be supporting the recommendation of the Planning Commission in the absence of substantial information.

Councilmember Paggao spoke in support of the Planning Commission's recommendation.

Mr. Powers responded to questions from Councilmember Campbell about enforcement stating there is a higher standard now than before.

Councilmember Munns asked about a variance and Councilmember Servatius suggested a period of probation.

Mr. Powers stated the code applies to the entire community and cautioned Council about discussing the ordinance in relation to the previous business at that location.

**Ordinance 1672 An Ordinance of the City of Oak Harbor Amending Oak Harbor Municipal Code Chapter 5.22 Nightclubs to Include Application Restrictions, Application Conditions, Revocation of License Procedures to Include Hearing Examiner and Other Clarifications**

**Motion:** Councilmember Alberg moved, seconded by Councilmember Munns, to adopt Ordinance 1672. The motion carried 6 to 1; Hizon opposed.

**Date: January 7, 2014**

**Proposed Conditions for:**

*The Hookah Haze Lounge  
1090 SE Pioneer Way  
Oak Harbor, WA 98277*

**The nightclub license-holder shall:**

1. Adhere to all laws, regulations, ordinances and zoning conditions of the State of Washington and the City of Oak Harbor applicable to the nightclub business located at 1090 SE Pioneer Way, Oak Harbor, Washington.
2. With the exception of ingress and egress to and from the building, ensure that doors and windows remain closed at all times while any type of music or entertainment is playing.
3. Ensure that the parking lot, sidewalks are kept clean of litter, daily by 6:00 a.m.
4. Provide designated and visible employee(s) sufficient to reduce the potential for illegal activity, noise violations or any other public health and safety violation as described in the Oak Harbor Municipal Code, inside and outside the business to include the parking lot and adjacent properties. This will include:
  - a. A minimum of two designated and visible employees within the building, while open for business as a nightclub (live music or disc jockey).
  - b. The license-holder shall implement and enforce a ban policy, that will ban patrons from the establishment for a three month period, who:
    - Engage in activities in the business and/or parking lot which either result in arrest or would constitute probable cause for arrest.
    - Create noise violations in the business and parking lot.
    - Loiter in the parking lot for more than ten minutes.
    - Engage in illegal activity immediately adjacent to the business property, after leaving the club.
  - c. The license-holder will provide the Oak Harbor Police Department with a copy of the list of banned patrons on a weekly basis.
  - d. The license-holder shall implement and enforce a policy which requires club employees to call the police, as soon as possible, when they witness potential criminal activity in the business, in the parking lot, and adjacent to the club property.
7. On a monthly basis, provide OHPD with the current hours of operation at this location.
8. Meet with the Chief of Police or his designee in six-month to review the efficacy of the conditions of this license in meeting the goals of the Nightclub Ordinance, Ch. 5.22 OHMC. The Chief of Police shall submit a report to the City Council reporting upon the efficacy of the conditions of this license in preventing or mitigating the noise, traffic and public health and safety impacts of the nightclub.
9. The license-holder acknowledges that the Chief of Police or other city official may, pursuant to OHMC 5.22.090, submit an investigative report to the City Council at any time if, in that official's opinion, the license conditions have not been sufficient to mitigate the noise, traffic and public health and safety impacts of the nightclub. In the event that such report is submitted to the City Council, the license-holder may be subject to new or additional conditions as provided in OHMC 5.22.090.

Any violation of the above conditions, according to the Chief of Police of Oak Harbor, shall subject the license-holders to the penalties of Oak Harbor Municipal Code 5.22.065 and may subject the license-holders to license revocation per Oak Harbor Municipal Code Section 5.22.070.

# **ATTACHMENT**

**1**

ORDINANCE NO. 1672

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 5.22 NIGHTCLUBS TO INCLUDE APPLICATION RESTRICTIONS, APPLICATION CONDITIONS, REVOCATION OF LICENSE PROCEDURES TO INCLUDE HEARING EXAMINER AND OTHER CLARIFICATIONS

WHEREAS, the City of Oak Harbor finds that restaurants and other businesses that offer food and drink in conjunction with musical entertainment at night have a tendency to create noise, traffic and similar public health and safety issue impacts on residential uses located in the vicinity of those businesses; and

WHEREAS, existing residential neighborhoods and potential residential uses are allowed in zones in which such businesses are also allowed in furtherance of a planning goal of mixed-use neighborhoods and economic diversity within the City; and

WHEREAS, response to resident complaints concerning noise, traffic and similar public health and safety impacts associated with those businesses requires significant expenditure of police and other City resources; and

WHEREAS, the City finds that the possible noise, traffic, or other similar public health and safety impacts could be addressed by regulating the size of uses that can apply for nightclub licenses based on the zoning district they are located in; and

WHEREAS, by addressing the size of nightclubs in zoning districts that permit residential uses, the City finds that the conflict among uses and neighbors may be minimized; and

WHEREAS, the expressive content of the musical entertainment should not be a consideration in determining the noise, traffic and similar public health and safety impacts on residential uses; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

**Section One.** Section 5.22.030 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.030 Issuance restrictions.**

No license shall be issued to:

- (1) If the nightclub serves alcohol, a person who has not resided in the state of Washington for at least one month prior to making application.
- (2) A person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.
- (3) A co-partnership, unless all the members thereof shall be qualified to obtain a license as provided herein.

(4) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington and all of the officers and directors shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head of the corporation or company.

**Section Two.** There is hereby added a new Section 5.22.035 entitled “Application restrictions” to Chapter 5.22 of the Municipal Code as follows:

**5.22.035 Application restrictions.**

(1) No application for a nightclub license can be made for buildings and uses located in the R-1 Single Family, R-2 Limited Multi-Family, R-3 Multi-Family, R-4 Multi-Family, R-O Residential Office, C-1 Neighborhood Commercial, C-4 Highway Service, PF Public Facilities, OS Open Space or any other zoning district not specifically regulated below.

(2) An application for a nightclub license can be made for buildings and uses in the CBD Central Business District, CBD-1 Central Business District 1, CBD-2 Central Business District 2, and the C-3, Community Commercial District only if the occupancy limit for said building or use is less than 300 as determined by the Building Official and the Fire Chief.

(3) An application for a nightclub license can be made for buildings and uses in the C5, Highway Corridor Commercial District Buildings only if the occupancy limit for said building or use is less than 400 as determined by the Building Official and the Fire Chief.

(4) An application for a nightclub license can be made for any building and use in the PBP, Planned Business Park, PIP Planned Industrial Park and I Industrial zones.

**Section Three.** Section 5.22.040 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.040 Filing of application.**

Application for a nightclub license shall be made to the city clerk, together with a receipt from the city finance director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the primary use, zoning district and the business location upon which the nightclub activities will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in OHMC 5.22.045, unless stayed by filing of a judicial appeal within 30 days of the city council decision appealed.

**Section Four.** Section 5.22.045 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.045 License conditions.**

(1) Upon receipt of an application for a nightclub license, the city clerk shall transmit copies of the application to the chief of police, fire chief and the building official.

(2) The fire chief and the building official shall determine if the application meets the provisions of 5.22.035.

(3) The chief of police shall immediately conduct a WATCH criminal background check of the applicant(s).

(2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of a nightclub. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as a nightclub.

(3) The chief of police shall report to the city council the result of his investigation and make recommendations concerning any conditions that should be placed upon the nightclub license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.

(4) The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon.

(5) The decision of the city council shall be the final decision of the city. No rights shall vest in a license issued under this chapter and all licenses are subject to modification and/or revocation in accordance with the provisions of this chapter.

**Section Five.** Section 5.22.065 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.065 Violation of license conditions.**

A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties or license revocation as follows:

(1) A First violation of a license condition since initial license issuance: \$500.00 fine per violation;

(2) A Second violation of any license condition since initial license issuance: \$750.00 fine per violation;

(3) A Third violation of any license condition since initial license issuance : \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC.

Any fourth or greater violation of any license condition since initial license issuance shall be deemed a material violation and shall subject the license to revocation under the provisions of Section 5.22.070.

**Section Six.** Section 5.22.070 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.070 Revocation of license.**

The City reserves unto itself the power to revoke any license issued under the provisions of this chapter at any time upon a finding that:

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or
- (3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were materially violated;
- (4) If the nightclub serves alcohol, material violation of any regulation of the Washington State Liquor Control Board or material violation of any condition imposed by the Washington State Liquor Control Board;
- (5) Conditions imposed upon the license pursuant to OHMC 5.22.045 have been violated more than three times with notices of violation issued with the civil offense sustained; or
- (6) Fines levied for a sustained notice of violation under OHMC 5.22.065 are due and have been unpaid more than thirty (30) days since the date the fine became final

Before revoking any such license, the City shall provide at least 10 days' written notice to the licensee of intent to seek revocation and the grounds for the same and schedule and hold a public hearing concerning such revocation before the City's hearing examiner. The jurisdiction of the Office of Land Use Hearing Examiner under Chapter 18.40 OHMC is hereby expanded to include jurisdiction over any revocation hearing under this section. The decision of the Examiner shall be a Type IV decision. The City shall bear the burden of proof at the public hearing. The licensee shall be entitled to be heard and introduce the testimony of witnesses. Members of the public may also be permitted to testify at such public hearing. The Examiner shall conduct the hearing and submit recommended findings of fact, conclusions of law and a decision to the City Council. Final action shall be by the city council. Any appeal of the final action of the City council shall be by writ of review under Chapter 7.16 RCW.

**Section Seven.** Section 5.22.080 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.080 License – Compliance required.**

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees, if they serve alcohol, shall comply with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of vio-

lation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065.

**Section Eight.** Section 5.22.090 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.090 Revision of license conditions.**

The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing before the city council to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final, subject only to a writ of review before the Superior Court pursuant to Chapter 7.16 RCW.

**Section Nine.** Section 5.22.100 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.100 Appeal to court.**

Appeal of any final decision of the city under this chapter shall be to superior court by writ of review pursuant to Chapter 7.16 RCW. . The city's decision shall be stayed upon appeal filed within 30 days of the city council decision appealed, pending judicial review.

**Section Three.** Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

**Section Four.** Effective Date. This Ordinance shall be in full force and effect five days after publishing.

PASSED by the City Council this \_\_\_\_\_ day of \_\_\_\_\_ 2013.

CITY OF OAK HARBOR

\_\_\_\_\_  
SCOTT DUDLEY, MAYOR

Attest:

Approved as to Form:

\_\_\_\_\_  
Valerie J. Loffler, City Clerk

\_\_\_\_\_  
Grant K. Weed, Interim City Attorney

Published: \_\_\_\_\_

# **ATTACHMENT**

**2**

**City of Oak Harbor  
Planning Commission Memo**

Date: April 13, 2012

Subject: Restricting size of Nightclubs  
by zoning districts

**FROM:** Cac Kamak, AICP  
Senior Planner

**PURPOSE**

The City has received a request to consider restricting Nightclubs based on size. The request is based on impacts (noise, loitering, etc) that large nightclubs are having on surrounding uses. The purpose of this memo is to provide the Planning Commission with information on current codes and regulations regarding Nightclubs<sup>1</sup>.

Since the request originated from the public, it is appropriate for the Planning Commission to consider this item and take public comment. Comments and discussions at the meeting can help frame the problem and also provide options/amendments to pursue.

**BACKGROUND**

The City Council has received several complaints about the impact of large nightclubs on surrounding uses. Most of them originate from residences around the nightclub Element, however, a few comments have also originated from residences along SE Hathaway Street and SE Ireland Street that are in proximity to nightclubs along Pioneer Way. The most common complaint is noise from parking lots adjacent to these uses, but other impacts such as loitering, trespassing, public urinations and lewd conduct are also significant impacts.

The City does have ordinances against excessive noise in OHMC Chapter 6.56 (Exhibit A). The Police Department is aware of these impacts and respond to or provides their presence at these locations when resources are available. However, police presence alone may not fully address the noise problem since the voice and sounds of a large group of patrons leaving the nightclub is still high even though individuals are well within the public nuisance noise levels.

The nightclub business owners have also instituted various strategies in curbing the noise and impacts by implementing security and by providing options for the patrons so that the mass exodus from the club at closing can be regulated. These measures have had minimum effects on the impacts.

Since the impacts from nightclubs have been continuous with little to no relief, citizens impacted by the use have requested a change to the code to restrict nightclubs by size as a way to reduce the number of people that can congregate or exit a nightclub with the hope

<sup>1</sup> The term Nightclub is being used loosely in this report to uses that have a Nightclub License. The Oak Harbor Municipal Code (OHMC) defines Nightclubs only in the Business License and Regulations Chapter. Nightclub is not specifically defined or listed as a use in any of the zoning districts.

that it will help reduce noise impacts and also prevent other impacts associated with large groups.

### **DISCUSSION**

Nightclubs are regulated by OHMC Chapter 5.22 under the Business Licenses & Regulation section (Exhibit B). As defined in OHMC 5.22.010, any use such as but not limited to a restaurant, bar, tavern, cocktail lounges etc, that will provide music, singing, dancing or a combination of these activities past 10 pm is required to obtain a “Nightclub” license. The regulations exempt establishments from obtaining a “Nightclub” license for music if the food sales contribute to 75% or more of the gross business income. Therefore, it is important to note that currently the term “Nightclub” in the OHMC is used only in reference to the license and is not listed as a “Use” in any of the zoning districts because any use can get a “Nightclub” license if they are going to provide for activities as defined above.

Currently six establishments have obtained “Nightclub” licenses in Oak Harbor. They are Elements, Seven West, Off the Hook, Oak Harbor Tavern, El Cazador and Mi Pueblo. These six establishments can be categorized as bars, taverns or restaurants. These are all permitted uses in the CBD, Central Business District, C3, Community Commercial District and C5, Highway Corridor Commercial District.

There are several questions that arise in considering the request to reduce the size of uses that have “Nightclub” licenses.

- Should the size restriction that is being requested apply only to uses that apply for a “Nightclub” license? - since a “Nightclub” license is required only if activities defined above are past 10pm, this may address the late night impacts, however, it may not apply to other potential large establishments such as Brew Pubs, Billiards and Pool Hall, Theatre, Conference Center etc., that can generate similar impacts.
- Should a size restriction for “Nightclub” license applicants apply to only certain districts? – Most of today’s complaints on impacts are originating in the CBD district.
- If the restrictions should apply to only certain districts (CBD) and if the impacts are related to large groups exiting uses after 10 pm, should there be a general size limitation on uses in that district? – Even though many of today’s complaints originate from “Nightclub” license holders, similar impacts can be caused by other uses. Restricting general size requirements may have other impacts such as redevelopment and economic vitality.
- One of the suggestions made was to limit the occupancy load for “Nightclub” license holders. This is not a practical solution and is difficult to review, regulate, monitor and enforce. It may also not be legally defensible. Occupancy limits are national or state adopted standards and the City cannot arbitrarily pick a limit less than those standards for a particular use. Restrictions by area are more practical and achievable. However, picking the area/size of these uses that will achieve the desired result will be the challenge.

It is natural for the community to focus on the current impacts based on the layout of uses today. Uses change over time and so will the impacts. It would be wise to consider changes, if any, in the larger context of the zoning district and all the permitted and

conditional uses that can potentially develop in the future. The zoning regulations for the CBD district (Exhibit C) have been attached for your reference.

**RECOMMENDATIONS**

This memo is to provide the Planning Commission with information on this issue. The item has been placed on the agenda and advertised so that the Planning Commission can provide an opportunity to the public, impacted citizens and business owners to give input and comments on the issue. No action is required on the item at this time. Any direction that comes out of this public input process will be used to present changes for consideration. Those changes will go through a formal approval process that will include public hearings at the Planning Commission.

**Attachments:**

Exhibit A – OHMC 6.56 Public Nuisance Noise

Exhibit B – OHMC 5.22 Nightclubs

Exhibit C- OHMC 19.20 Article VIII CBD Central Business District

**Chapter 6.56  
PUBLIC NUISANCE NOISES**

## Sections:

- 6.56.010 Findings and declaration of necessity.  
6.56.020 Unnecessary noise prohibited.  
6.56.030 Specific noises prohibited.  
6.56.040 Further relief under the law.

**6.56.010 Findings and declaration of necessity.**

The making, creation or maintenance of excessive, unnecessary or unusual loud noises which are prolonged and unusual in their time, place and use affect and are a detriment to public health, comfort, convenience, safety, welfare and prosperity of the people of the city of Oak Harbor. The necessity in the public interest for the provisions, controls and prohibitions of this chapter is declared to be a matter of legislative determination and public policy; and it is further declared that the provisions, controls and prohibitions of this section are in pursuance of and for the purpose of securing and promoting the public health, comfort, convenience, safety, welfare and prosperity and the peace and quiet of the city of Oak Harbor and its inhabitants. (Ord. 597 § 1, 1981).

**6.56.020 Unnecessary noise prohibited.**

It is unlawful for any person to make, continue, or cause to be made or continued any excessive, unnecessary or unusual loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the city of Oak Harbor. (Ord. 597 § 2, 1981).

**6.56.030 Specific noises prohibited.**

(1) The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this chapter, but the following enumeration shall not be deemed to be exclusive, namely:

(a) Horns, Signaling Devices, Etc. The sounding of any horn or signaling device on any automobile, motorcycle or other vehicle on any street or public place of the city, except as a danger warning; the creation by means of any such horn or signaling device of any unreasonably loud or harsh sound; and the sounding of any such horn or signaling device for any unnecessary and unreasonable period of time. The use of any horn or signaling device, except one operated by hand or electricity; the use of any horn, whistle or other device operated by engine exhaust; and the use of any such horn or signaling device for any purpose when traffic is delayed, except as a danger warning;

(b) Radios, Phonographs, Sound Systems. The using, operating or permitting to be played, used or operated any machine or device such as a radio receiving set, musical instrument, phonograph, CD player, tape player or recorder, sound system, or other machine or device used for the producing or reproducing of sound in such a manner so as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing of the person or persons who are in the room, vehicle or chamber in which such machine or device is operated

and who are voluntary listeners thereto;

(c) Operation of Radios, Phonographs and Sound Systems in the Night. The playing, using, operating or permitting to be played, used or operated any such radio receiving set, musical instrument, phonograph, CD player, tape player or recorder, sound system machine or device between the hours of 9:00 p.m. and 7:00 a.m., the next morning, in such a manner as to be plainly audible at a distance of 75 feet from the building, apartment, condominium, structure, vehicle or other location where the machine or device is located;

(d) Loudspeakers, Amplifiers for Advertising. The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph, CD player, tape player or recorder, loudspeaker, sound amplifier, sound system or other machine or device for the producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any building or structure;

(e) Yelling, Shouting, Etc. Yelling, shouting, hooting, whistling or singing on the public street, particularly between the hours of 9:00 p.m. and 7:00 a.m., the next morning, or at any time or place so as to annoy or disturb the quiet, comfort or repose of persons in any office, or in any dwelling, hotel or other type of residence, or any persons in the vicinity;

(f) Animals, Birds, Etc. The keeping of any animal or bird which by causing frequent or long continued noise shall disturb the comfort or repose of any persons in the vicinity;

(g) Noisy Operation of a Vehicle. Operating or using any automobile, truck, motorcycle, or other vehicle in such a manner as to create the squealing or chirping of tires, loud and unnecessary grating, grinding, rattling or other noise, except as deemed necessary by those operating or using a vehicle for emergency response. It shall be unlawful for a vehicle to emit excessive loud exhaust or other operating noises. Mufflers shall be in such condition so that they will not create unreasonably loud noises;

(h) Construction, Demolition or Repairing of or on Buildings, Structures or Other Property. The erection (including excavation), demolition, alteration or repair of or on any buildings, structures or other property other than between the hours of 7:00 a.m. and 9:00 p.m., on weekdays, except in the case of urgent necessity in the interests of public health and safety, and then only with a permit from the building official, which permit may be granted for a period not to exceed three days or less while the emergency continues and which permit may be renewed for a period of three days or less while the emergency continues. If the building official should determine that the public health and safety will not be impaired by the erection, demolition, alteration or repair of or on any building, structures or other property on weekends and/or within the hours of between 8:00 a.m. and 5:00 p.m., and if he/she shall further determine that substantial loss or inconvenience would not result to any party in interest, the building official may grant permission for such work to be done within the hours of 8:00 a.m. and 5:00 p.m., upon application being made at the time the permit for the work is issued or during the progress of the work;

(i) Vehicle Stereos, Radios, Etc. Operating a motor vehicle which produces, creates, generates, amplifies, continues or causes to be produced, created, generated or

amplified any excessive noise or sound, when such vehicle is being driven or is parked on public property, public ways, or public rights-of-way. For the purpose of this section, the term "excessive noise" shall mean noise or sound which injures or endangers the comfort, repose, peace, safety or health of a human being, or annoys or disturbs a reasonable person and which is produced, created, generated, or amplified by radios, stereos, television equipment, electronic audio equipment, musical instruments and similar devices which is plainly audible to any person 30 feet or more from the motor vehicle which produces, creates, generates, amplifies, continues or causes to be produced, created, generated or amplified the excessive noise or sound and the term "plainly audible" means any person who can hear the content of the sound produced by the noise source including, but not limited to, musical rhythms, spoken words, and vocal sounds.

(2) Noise Permit and Parade Permit as Exceptions.

(a) Noise Permit. The city council may grant a permit to make noise or perform acts otherwise controlled or prohibited by this chapter upon application by a person specifying the nature and extent of noise to be made or continued, or the act to be performed, upon a determination by the city council that to deny the permit under the circumstances surrounding the making of the application would create undue hardship upon the applicant, and upon a further determination by the city council that to grant the permit would not create an undue and prolonged hardship on others, for whose benefit and protection the noise or act is prohibited by this chapter. Any permit so granted may contain conditions or requirements upon which it is granted as the city council deems necessary to minimize the adverse effect upon the people of the community or surrounding neighborhood which may be affected by granting the permit, and the permit shall specify a reasonable time for which it is to be effective. In addition to the basis of undue hardship as a standard for granting such a permit, the city council may grant such a permit upon determination that:

- (i) The granting of the permit is necessary to allow applicant to modify his customary activities so as to comply with this chapter, if the city council determines that such customary activity of the applicant was not originally undertaken or performed under circumstances and in a manner evidencing a disregard for the rights of others; or
- (ii) The activity, operation or noise source will be of temporary duration and cannot reasonably be performed or controlled in such a manner so as to comply with the provisions of this chapter; or
- (iii) The activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

(b) Parade and Motorcade Permits. The provisions, controls and prohibitions of this section shall not apply to noise made by acts performed by bona fide participants in a parade or motorcade authorized by a permit issued pursuant to the provisions of OHMC 5.36.010 through 5.36.030.

(3) Additional Remedies – Injunction and Summary Abatement.

(a) Injunction. The making or continuing of noise or the performing of acts in violation of this chapter which causes discomfort or annoyance to reasonable persons of normal sensitiveness or which endangers the comfort, repose, health or peace of residents in the area affected by the unlawful act or noise is a public nuisance subject to abatement by a restraining order or injunction issued by a court of competent jurisdiction.

(b) Abatement. Any unlawful act or noise prohibited by this chapter shall be subject to abatement as provided by law. (Ord. 1511 § 1, 2007; Ord. 1329 § 1, 2002; Ord. 939 § 1, 1992; Ord. 597 § 3, 1981).

**6.56.040 Further relief under the law.**

Nothing in this chapter shall be construed to limit the city's or any person's rights or powers to obtain relief applicable under state or federal law. (Ord. 597 § 5, 1981).

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**This page of the Oak Harbor Municipal Code is current through Ordinance 1604, passed May 17, 2011.**

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**Chapter 5.22  
NIGHTCLUBS**

## Sections:

- 5.22.010 Definitions.
- 5.22.020 License required.
- 5.22.030 Issuance restrictions.
- 5.22.040 Filing of application.
- 5.22.045 License conditions.
- 5.22.050 Annual license fee.
- 5.22.060 Proration of license fee.
- 5.22.065 Violation of license conditions.
- 5.22.070 Revocation of license.
- 5.22.080 License – Compliance required.
- 5.22.090 Revision of license conditions.
- 5.22.100 Appeal to court.

**5.22.010 Definitions.**

(1) "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises.

(2) "Premises" means any room, place, or space whatsoever in the city of Oak Harbor which is open to the general public in connection with any hotel, restaurant, cafe, club, tavern or eating place directly or indirectly selling, serving, or providing the public liquor, with or without food.

(3) "Liquor" means all beverages defined in RCW 66.04.200.

(4) "Person" means one or more natural persons of either sex, firms, copartnerships and corporations; whether acting by themselves or by servant, agent or employee.

The provisions of this chapter shall not apply to temporary activities conducted pursuant to a city special event permit issued pursuant to Chapter 5.50 OHMC and lasting no longer than 48 hours. (Ord. 1544 § 1, 2008; Ord. 321 § 1, 1972).

**5.22.020 License required.**

It is declared to be unlawful for any person to conduct, manage or operate a nightclub unless such person is the holder of a valid license from the city of Oak Harbor so to do, obtained in the manner provided in this chapter. A first violation of the requirement to obtain a license shall be a civil infraction filed pursuant to Chapter 1.28 OHMC, punishable by a fine of \$250.00. A second violation shall be a civil infraction punishable by a fine of \$500.00. A first or second violation of the requirement to obtain a license shall be a civil offense subject to the procedures of Chapter 1.28 OHMC. Thereafter, further violation of the requirement to obtain

a license of this chapter shall be a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time. (Ord. 1544 § 1, 2008; Ord. 321 § 2, 1972).

**5.22.030 Issuance restrictions.**

No license shall be issued to:

(1) A person who has not resided in the state of Washington for at least one month prior to making application.

(2) A person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.

(3) A copartnership, unless all the members thereof shall be qualified to obtain a license as provided herein.

(4) A corporation, unless all of the officers, directors and stockholders thereof shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head thereof. (Ord. 1544 § 1, 2008; Ord. 588 § 1, 1981; Ord. 321 § 3, 1972).

**5.22.040 Filing of application.**

Application for a nightclub license shall be made to the city clerk, together with a receipt from the city finance director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the business location upon which the nightclub will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC ~~3.64.100~~. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in OHMC 5.22.045, unless stayed by filing of a judicial appeal within 30 days of the city council decision appealed. (Ord. 1544 § 1, 2008; Ord. 321 § 4, 1972).

**5.22.045 License conditions.**

(1) Upon receipt of an application for a nightclub license, the city clerk shall transmit the application to the chief of police, who shall immediately conduct a WATCH criminal background check of the applicant(s).

(2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of a nightclub. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as a nightclub.

(3) The chief of police shall report to the city council the result of his investigation and make recommendations concerning any conditions that should be placed upon the nightclub license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for

traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.

(4) The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon.

(5) The decision of the city council shall be the final decision of the city. (Ord. 1544 § 1, 2008).

#### **5.22.050 Annual license fee.**

Any person desiring to operate a nightclub shall first procure a nightclub license. The annual fee for a nightclub license shall be \$200.00 plus \$10.00 for an annual WATCH criminal background check. (Ord. 1544 § 1, 2008; Ord. 321 § 5, 1972).

#### **5.22.060 Proration of license fee.**

There shall be no prorating of the fee mentioned in OHMC 5.22.050, and such license fee shall expire on December 31st of each year; except that in the event that the original application be made subsequent to June 30th, then one-half of the annual license fee may be accepted for the remainder of the year. The license shall not be assignable. (Ord. 1544 § 1, 2008; Ord. 321 § 6, 1972).

#### **5.22.065 Violation of license conditions.**

A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties as follows:

- (1) First violation of a license condition: \$500.00 fine per violation;
- (2) Second violation of same license condition: \$750.00 fine per violation;
- (3) Third violation of same license condition: \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1 28 OHMC.

The fourth or greater violation of the same license provision shall constitute a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time (Ord. 1544 § 1, 2008).

#### **5.22.070 Revocation of license.**

The city council reserves unto itself the power to revoke any license issued under the provisions of this chapter at any time upon a finding that:

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or

(3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were knowingly and willfully violated by the person holding such license or at his/her direction; or

(4) A crime or offense involving moral turpitude is committed on the premises in which the nightclub is conducted with knowledge of the licensee.

Before revoking any such license, the city council shall, upon at least 10 days' notice to the licensee, hold a public hearing concerning such revocation, at which time the licensee shall be entitled to be heard and introduce the testimony of witnesses. Members of the public may also be permitted to testify at such public hearing. The action of the city council after such hearing, relative to such revocation, shall be final. (Ord. 1544 § 1, 2008; Ord. 996 § 1, 1995; Ord. 321 § 7, 1972).

#### **5.22.080 License – Compliance required.**

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees shall comply with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065. (Ord. 1544 § 1, 2008; Ord. 321 § 8, 1972).

#### **5.22.090 Revision of license conditions.**

The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final. (Ord. 1544 § 1, 2008; Ord. 321 § 9, 1972)

#### **5.22.100 Appeal to court.**

Appeal of any final decision of the city under this chapter shall be to superior court. The city's decision shall be stayed upon appeal filed within 30 days of the city council decision appealed, pending judicial review (Ord 1544 § 1, 2008).

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## Article VIII. CBD – Central Business District

**19.20.300 Purpose and intent.**

The central business district (CBD) is intended to preserve and enhance the unique harbor location of the city's heritage with the character of the traditional center of social, cultural and retail activity. Mixed use developments, combining retail and visitor-oriented activities on the ground floor with office, retail and residential uses above, are required. Within the district, pedestrian-oriented activity is encouraged. Standards and design guidelines are adopted to enhance and maintain a pedestrian-friendly environment. Incentives are also provided to encourage the development of mixed use projects. Subdistricts CBD-1 and CBD-2 are created in order to provide for flexibility of residential development within specific areas of the central business district. Large surface parking lots are not encouraged. Shared clustered parking areas in the middle of blocks are allowed away from street frontages. Access driveways are to be kept at a minimum to promote safety and convenience of pedestrians. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

**19.20.305 Principal permitted uses.**

In a central business district (CBD, CBD-1 or CBD-2), the following are principal permitted uses (for the purposes of this district only, uses considered to be "retail" are denoted with an (R)):

- (1) Antique shop (R);
- (2) Artist's studios and supplies (R);
- (3) Bakery, retail only (R);
- (4) Bank;
- (5) Barber and beauty shops;
- (6) Bars (R);
- (7) Bicycle shop (R);
- (8) Billiards and pool hall (R);
- (9) Blueprinting;
- (10) Bookstore (R);
- (11) Brew pub (R);
- (12) Camera and supply shop (R);

- (13) Clothes and apparel shop (R);
- (14) Cocktail lounge (R);
- (15) Coffee house (R);
- (16) Confectionery store (R);
- (17) Conference center;
- (18) Data processing facility;
- (19) Delicatessen (R);
- (20) Department store (R);
- (21) Dry cleaners;
- (22) Furniture shop (R);
- (23) Florist shop (R);
- (24) Gift shop (R);
- (25) Grocery store, neighborhood, provided gross floor area shall not exceed 12,000 square feet (R);
- (26) Hardware store (R);
- (27) Hobby shop (R);
- (28) Hotel and motel;
- (29) Ice cream shop (R);
- (30) Interior decorator studio (R);
- (31) Jewelry store (R);
- (32) Leather goods store (R);
- (33) Music store (R);
- (34) Offices;
- (35) Office supply and equipment store (R);

- (36) Pet shop (R);
- (37) Pharmacy and drug store (R);
- (38) Photographic film processing and associated retail sales (R);
- (39) Photographic studio and supplies;
- (40) Photocopying;
- (41) Post office;
- (42) Printing shop;
- (43) Residential uses, provided:
  - (a) In the CBD district: mixed use sites with multiple street frontages may locate dwelling units on the ground level on any street frontages other than Pioneer Way;
  - (b) In subdistricts CBD-1 or CBD-2: dwelling units may be the primary use of the site;
- (44) Restaurant, including sidewalk cafe (R);
- (45) Schools for the fine arts;
- (46) Shoe repair shop (R);
- (47) Shoe store (R);
- (48) Sporting goods shop (R);
- (49) Tailor shop (R);
- (50) Tavern (R);
- (51) Taxi service;
- (52) Theater;
- (53) Tobacco shop (R);
- (54) Toy store (R);
- (55) Travel agencies;
- (56) Trophy shop (R);

(57) Upholstery shop;

(58) Variety store (R);

(59) Visitor information center;

(60) Other uses similar to those identified above and having equal or less impact on the purposes of this section. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

### **19.20.310 Accessory permitted uses.**

In a central business district (CBD, CBD-1, or CBD-2), the following are accessory permitted uses:

- (1) A use customarily incidental and subordinate to a principal use permitted outright;
- (2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210;
- (3) Television satellite dish reflectors, roof-mounted and within building setback lines not to exceed the height limitations and other standards as set out in OHMC 19.20.320; provided said height limitation may be increased when such height is permitted per OHMC 19.28.040 and 19.28.050. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

### **19.20.315 Conditional uses permitted.**

The following principal uses and their accessory uses may be permitted in a central business district (CBD, CBD-1, or CBD-2) when authorized by the hearing examiner:

- (1) Coffee kiosk;
- (2) Dancehall;
- (3) Governmental buildings for administrative or protective services;
- (4) Health club;
- (5) Land reclamation with water-dependent marine development;
- (6) Parking lots or garages not in conjunction with permitted uses;
- (7) Places of entertainment and amusement, if conducted within a wholly enclosed building;
- (8) Private nursery school, kindergarten, or child day care center not qualifying as a home occupation on a legal lot; provided, there is established in connection therewith an outdoor play

area having a minimum area of 1,000 square feet plus an additional 50 square feet for each child in excess of eight;

(9) Public utility and communications facility;

(10) Transit terminals;

(11) Swimming pools or beaches, public or private;

(12) Other uses similar to uses permitted or conditionally permitted and normally located in the central business district; provided, that there shall be no manufacturing, compounding, processing or treatment of products other than that which is essential to the retail store or business where all such products are sold on the premises. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

### **19.20.320 Density provisions.**

In CBD, CBD-1 and CBD-2, the following density provisions apply:

(1) Allowable density:

District	Minimum	Maximum
CBD	None	None
CBD-1	9 du/ac	None
CBD-2	13 du/ac	None

(2) Minimum lot area, no limitation;

(3) Minimum lot width, no limitation;

(4) Minimum lot depth, no limitation;

(5) Minimum front yard, no limitation, except when opposite a residentially zoned property, then a 10-foot front yard is required. Front yard setback may also be increased to 10 feet if needed for traffic safety; front yard setback shall be provided so as to maintain a 12-foot sidewalk measured from the existing curb or future curb line;

(6) Minimum side yard, no limitation except when abutting a residentially zoned property, then 10 feet each. For corner lots, side yard may also be increased to 10 feet if needed for traffic safety;

(7) Minimum rear yard, no limitation except when opposite a residentially zoned property, then 10-foot rear yard is required or except when abutting a public street where the setback may be increased to 10 feet if needed for traffic safety;

(8) Maximum building height; 35 feet; except:

(a) In CBD: building height may be increased to 45 feet if ground floor retail space (as defined in OHMC 19.20.300) is developed in conjunction with a residential use;

(b) In CBD-2: building height may be increased to 45 feet for residential development (without a retail component);

(c) In CBD: building height may be increased to 45 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines;

(d) In CBD: building height may be increased to 55 feet for nonresidential uses or mixed use projects upon approval of the design review board and by providing additional urban amenities as defined in the Oak Harbor commercial and industrial design guidelines. The design review board shall specifically review the proposed project and building height for its impacts on waterfront and mountain views and require reasonable mitigation as necessary;

(9) Maximum lot coverage, no limitation;

(10) Parking.

(a) Nonresidential Uses. There shall be no required parking for nonresidential uses; except, however, if parking is provided, it shall meet the parking space size and access requirements of OHMC 19.44.110;

(b) Residential uses shall provide parking per Chapter 19.44 OHMC, except that guest parking need not be provided. If guest parking is provided it shall meet the parking space size and access requirements of OHMC 19.44.110;

(c) Any parking provided beneath a permitted residential use shall be enclosed;

(d) No more than 50 percent of the gross floor area along pedestrian-oriented streets may be used for residential parking;

(11) Design Standards.

(a) Development shall be in accordance with the provisions of the Oak Harbor commercial and industrial design guidelines;

(b) Residential development shall have ground level access independent of nonresidential uses from an inside lobby, elevators and/or corridors, from an enclosed interior court, or from other separate access provisions;

(c) Nonresidential development along Pioneer Way, between SE City Beach Street and SE Midway Boulevard, shall meet the following standards:

- (i) Ground-floor, nonretail development shall not comprise more than 50 percent of the lineal street frontage of the lot;
- (ii) Window areas for nonresidential portions of a building's facades shall not be less than 40 percent or greater than 60 percent of the total facade area;
- (iii) Conformance with the above standards shall be determined by using the design guideline applicability standards established under OHMC 19.48.040;
- (d) Residential development in subdistrict CBD-1 or CBD-2 shall be under a planned residential development per Chapter 19.31 OHMC;
- (e) Nonresidential development with building heights greater than 45 feet, as approved by the design review board, shall provide a minimum of 450 square feet of pedestrian-oriented space (as defined in the Oak Harbor commercial and industrial design guidelines) plus an additional 25 square feet for each vertical foot of building height above 45 feet;
- (f) All buildings in the CBD greater than three stories must set back upper stories by at least 10 feet. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

#### **19.20.325 Conditions governing permitted uses.**

All principal uses permitted outright in a CBD, CBD-1, or CBD-2 district shall meet the following conditions:

- (1) All business, service, repair, storage, or merchandise display shall be conducted within a wholly enclosed building, except for the following:
  - (a) Off-street parking and loading;
  - (b) Food and drink service in connection with cafes, restaurants or other eating establishments.
- (2) The use of property must not result in the creation of offensive odors or offensive or harmful quantities of dust, smoke, exhaust fumes, noise or vibration.
- (3) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

#### **19.20.330 Site plan and design review required.**

Site plan and design review shall be required as per Chapter 19.48 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

# **Minutes**

**Planning Commission  
April 24, 2012**

Mr. Kamak explained that they do not need to match and that the designations in the SMP are slightly different than the zoning classifications. They can be considered as layers on a map. We have a Comprehensive Plan amendment this year and if those amendments go forward then those properties will be rezoned.

Mr. Fakkema asked what a Scribner's error was. Ms. Sartorius said they were minors such as grammatical errors and typographical errors.

Mr. Fakkema opened the hearing for public comment. Seeing none, the public hearing was closed.

**ACTION: MR. OLIVER MOVED, MRS. JOHNSON-PFEIFFER SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADOPT THE ORDINANCE AND THE ATTACHED ZONING MAP. MOTION CARRIED UNANIMOUSLY.**

### **NIGHTCLUB ORDINANCE – Public Meeting**

Mr. Kamak reported that the City Council has received several complaints about the impact of large nightclubs on surrounding uses. Most of them originate from residences around the nightclub Element; however, a few comments have also originated from residences along SE Hathaway Street and SE Ireland Street that are in proximity to nightclubs along Pioneer Way. The most common complaint is noise from parking lots adjacent to these uses, but other impacts such as loitering, trespassing, public urinations and lewd conduct are also significant impacts. Since the request originated from the public, it is appropriate for the Planning Commission to consider this item and take public comment. Comments and discussions at the meeting can help frame the problem and also provide options/amendments to pursue.

Mr. Kamak explained that night clubs are regulated in the business license section of the Oak Harbor Municipal Code (OHMC). "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises.

Mr. Kamak noted that nightclubs are not listed as a use in any of the zoning districts in OHMC Title 19 Zoning. Any use can apply for a nightclub license. The review process for nightclub licenses currently goes through the police department and the City Council will either approve or deny the application. Mr. Kamak reiterated that the review of nightclub licenses is not a land use issue but a license issue. That is why the Planning Commission doesn't review the license and it goes straight to City Council.

Mr. Kamak said the following six businesses currently have nightclub licenses in Oak Harbor:

- Element – CBD (Central Business District)
- Seven West – CBD (Central Business District)
- Off the Hook – CBD (Central Business District)
- Oak Harbor Tavern – CBD (Central Business District)
- Mi Pueblo – CBD (Central Business District)
- El Cazador – C5, Highway Corridor Commercial

These uses are classified as Bars, Taverns and Restaurants – all of which are permitted uses in their respective zoning districts. Some of these uses can continue to exist without a nightclub license.

Mr. Kamak asked the Planning Commission to consider the following:

- Should the size restriction that is being requested apply only to uses that apply for a “Nightclub” license?
- Should a size restriction for “Nightclub” license applicants apply to only certain districts?
- If “size” is the issue, should there be a general size limitation on uses in certain zoning districts?

Mr. Kamak noted that the City of Anacortes doesn’t allow uses larger than 25,000 square feet in their downtown.

Mr. Kamak recommended that the Planning Commission take comments from the public and he provided copies of public comment that he had recently received through the mail and e-mail.

Mr. Fakkema opened the meeting for public comment.

**Billie Cook** (651 SE Bayshore Drive) indicated that she was one of the initiators of the request before the Planning Commission. Ms. Cook stated that after reading page 9 of the staff report she recognized that her suggestion to the Planning Commission to limit the size of night clubs may not be feasible but Mr. Kamak’s comments on the possibility of restriction nightclubs by area to achieve noise reduction are encouraging.

Ms. Cook asked the Planning Commission to start the process of solving the negative impacts of nightclubs versus the rights of other land users. She noted that there were the same problems 30 years ago with Cathay Palace, the Blue Dolphin and then the Lava Lounge and now Element. She recognized that any action taken now would not be retroactive but asked the Planning Commission to review, discuss and modify the City’s zoning code so as to alleviate the very real problems concerning nightclub impacts.

Ms. Cook stated she didn’t believe that nightclubs should be allowed close to churches, schools, residences or public amenities such as parks. There needs to be a conditional use permit required in any zone where nightclubs reside next to these land uses. The current practice of allowing nightclubs anywhere is unfair to surrounding land users and not in the best interest of the nightclub owners who may be unaware of the objections of nearby land users and they have to deal with them after the fact.

Ms. Cook thought that the base of the problem is that nightclubs are not a recognized land use and piggy-back onto another land use. She believed that nightclubs should be a separate land use so that they have to adhere to the same rules that other land uses have to follow. She stated that licenses are all but impossible to deny, regulate or revoke and the City finds itself in a morass in trying to impose conditions to mitigate but they have to have the cooperation of the licensee.

Ms. Cook offered to serve on a citizens committee to further work on this issue.

**Richard Everett** (651 SE Bayshore Drive) stated that he believed the problem began when the condominiums were built inside of the Central Business District (CBD). Now there is a conflict

between residences and businesses. He recommended considering the type and size of a business to restrict them from encroaching on areas where we know families or elders live. Mr. Everett noted that there are people with health issues that have been severely impacted and can't even live in their unit anymore. He asked that the Planning Commission consider the elderly that are looking for some semblance of peace in their years as senior citizens.

**Yvonne Howard** (2300 SW Vista Park Drive) stated that she works at 656 SE Bayshore Drive Suite 2 which is the church next door to Element. She said that they are affected by Element with the people that hang out in the parking lot, the smoking in front of the door and all of the colorful language that they have to endure while holding Bible study. The young kids in the youth group are affected by Element activities as well. She believed that this needed to be addressed.

**Kelly Beedle** (940 SE Pioneer Way) stated that she was the owner of the Oak Harbor Tavern which has been there since 1859. The tavern is right next to a church and houses and they haven't had any problems. She didn't understand how the City could limit the size because when someone rents a building it is already a certain size. She believed that business is about respect. Respect of the citizens, the City of Oak Harbor and the police. She asked why Element owners weren't present because she knew that business owners were notified of this meeting. She also wondered why there were only six licenses in the City because restaurants should have licenses too since they are playing music after 10:00 p.m.

Ms. Beedle suggested:

- Talking to the Element owners
- Borrowing equipment that monitors noise levels from the Naval Air Station
- Element should lean on their customers and require the customers be respectful and not just feed them alcohol and let them act like animals
- A fine system

**Paul Newman** (886 SE Bayshore Drive) stated that he could be considered at "ground zero" because he is located right next to Mi Pueblo, opposite the old Lava Lounge or The Hook and the Oak Harbor Tavern. He echoed what Ms. Beedle said about the Oak Harbor Tavern not being a problem and he added that Mi Pueblo is not a problem either. Most of the so called night clubs are not the problem it is just Element. He hoped the Planning Commission would consider "Nuclear options" with regard to the Element.

Mr. Newman noted that the City of Oak Harbor spent tens of thousands of tax dollars on the best study that he has seen Oak Harbor conduct. The study defined the concept and character of Windjammer Park. Element represents an absolute contradiction of the character and the concept of what the City was aiming for and it is just as much land use as it is licensing or anything else. He said that Element in that area is about as appropriate as an adult book store next to an elementary school. Within 100 yards of Element are kids playing T-ball and Little League, families picnicking and a bus depot where teenagers hang out to take advantage of the free busses. Within a couple of hundred yards, the chain link fence is falling down because people climb over it because they don't want to walk on the street to get from Mi Pueblo to Element and back. Some of the neighbors have put in gates and they don't use the gates and still jump over them because they are drunk.

Mr. Newman talked about the noise restrictions in OHMC Section 6.56.030 that describes specific noises that are prohibited. Mr. Newman said that all of the noises listed are noises coming out of Element.

Mr. Newman was concerned that during the summer when it stays light later and kids are still playing that there may be another fight in the parking lot or another shooting in the parking lot and it is another incident or tragedy waiting to happen and Element should never been allowed there in the first place and is violating noise restrictions.

Mr. Newman asked why Element's license is automatically renewed and how couldn't the license be reviewed year after year? Mr. Newman pointed out OHMC Section 5.22.070 Revocation of License and recited Section 5.22.070(1) which says "The license was procured by fraud or false representation of fact: or..." Mr. Newman said that false representation of fact does not have to be intentionally done. It can be false with all the good intent in the world. If the police investigated this and believed there wouldn't be problems with all the best intent in the world but there are problems then there is a false representation of fact that has been made. Mr. Newman didn't think that a revocation of the license would be beyond what can be done in this respect. That is what he meant by "Nuclear options". He thought that the City should encourage Element to relocate and to cooperate in that relocation. Mr. Newman pointed out that there is all of Goldie Road and all of Ault Field Road. There are locations for Element where it would do better and the City would do better than putting it in Windjammer Park where it has no business being in the first place and represents a contradiction of a lot of tax payer money.

**Quentin Reeves-Herbert** said that he frequents some of the nightclubs that are being discussed and most of the nightclubs have no problems other than Element. He noted that he was involved in the bottle slashing incident at Element. He thought that the size was a problem and if you don't have enough security to watch over a place that big then problems will occur. He said that there were two other incidents that occurred on the same night that the bottle slashing incident occurred and because they didn't have enough staff or manpower to cover the entire building the slashing was allowed to happen and the other person involved was allowed to actually walk straight out the front door, get in a vehicle and leave. Security and a sense of security for the patrons and the neighbors is a point that he wanted the City to address.

**Darnell Allen** (7-West business owner) said that when Element lets out at night there are a lot of people coming out of the bar all at the same time and it sounds like a stadium in downtown Seattle when a game just let out. Mr. Allen said that the police are there every weekend doing the best they can to help. The magnitude of people that come out at one time is overwhelming and chaotic. He thought maybe cutting down the size might work. Mr. Allen pointed out Mr. Reeves-Herbert as a peacemaker, and since we are a small community we know the people that are bad actors and there is no reason for those people to be allowed in. You have a right to refuse anybody and if you can't identify that and you are taking money over respect to these people I would be upset too. My best suggestion would be to cut down the size.

Mr. Oliver asked what Element's square footage is and of that square footage, how much is taken up by Bayside Casino? Mr. Kamak did not have the square footage information yet but would bring square footage information about the average building sizes downtown as a gauge for comparison of the building stock available downtown. He believed that Element was a little less than 10,000 square feet.

Mr. Oliver said that normally people will go to the central business district to find music and entertainment. His concern was that if there is a restriction of 2,000 square feet, as an example, that would potentially cause more nightclubs to pop up and potentially multiply the problem.

Mr. Oliver asked if it was going to be mandatory for all nightclub licenses to renew every 90 days since that is what Element has to do. Mr. Kamak said that the 90-day license renewal was a special condition placed on Element because of all the complaints and issues surrounding them and he did not think the other like nightclub license holders had the same conditions imposed on them.

Mr. Oliver suggested a sponsor night. Seniors and condo owners should be sponsored by some of the people that frequent the nightclub so they can physically see who Element is affecting as opposed to just paper complaints to police. Mr. Oliver also suggested a meeting between all tavern, bar and nightclub owners and have a workshop to figure it out.

**Richard Everett** (651 SE Bayshore Drive) said that they have dealt with Chief Wallace and the Mayor extensively and have suggested things like Mr. Oliver has suggested repeatedly. On the surface the suggestion is excellent but the reality is that Mr. Kumberfelt has failed to meet with them on several occasions when we were supposed to get together. We can go forward with a get-together but there has to be some teeth in that to make it happen because Mr. Kumberfelt's only concern is serving his customers inside his bar and he submitted a letter to the City Council saying that that was where his responsibility as a business man is. He has also made the statement that when they walk out the door they are no longer his problem. Until he is made to participate, I think you are spinning your wheels. It is our opinion that the 90-day review is not being done and that it has been over a year since the last review.

Ms. Johnson-Pfeiffer clarified that the Planning Commission is a land use commission and she is listening for comments that are within the scope of the Planning Commission and what they are allowed to refer to the City Council. From a land use perspective looking at the scale and size of businesses allowed in the CBD, she was more comfortable with targeting any type of business by saying that 20,000 feet of any type of business is too big for the CBD, she said she was less comfortable with a conversation that says 20,000 square feet of nightclub use. From a licensing perspective, if the conversation is how you administer a license; that is not within the Planning Commission's scope. Ms. Johnson-Pfeiffer referred to Mr. Newman's comment about Windjammer Park. She noted that all of the downtown development is predicated on the mixed use concept which is in the Comprehensive Plan. We have built this entire downtown concept on this idea that life in urban areas can be consolidated living. She was concerned that land use decisions will be made on a particular problem and that would be in contradiction to this value that is in multiple documents in the City, that we want people to work and live in the same area. The bigger problem for the City is how do you keep integrating these types of uses and if these uses are incompatible and if the community is saying we don't like our businesses where our residential is then there is a bigger picture problem in terms of what our foundation document is which is that we want all of this infill and mixed use living. Reaction to one situation isn't okay in terms of a land use perspective. Ms. Johnson-Pfeiffer said that she had fundamental concerns where anything that is specific about one individual's behavior dictating land use. So if it is an Element problem she was not sure that that conversation should be a land use conversation. She has concerns that even happened and thought that a specific problem with a specific business needs to be dealt with appropriately and not dealt with a broad brush like this. She summarized, if we don't want mixed use as a community that is the conversation, and we need to look at our source documents and the second part is that if we don't want 20,000 square feet of retail or anything else, then deal with the size and not a specific use.

**Richard Everett** (651 SE Bayshore Drive) said that their comments were made so that the Planning Commission would understand the nature of the problem and to encourage the

Planning Commission to find a solution in the Planning Commission's domain that would support the City Council and the objectives of the City. Mr. Everett said that he hoped the Planning Commission would say to the City Council that you perceive obvious problems with mixed use and he didn't think there would be cut and dry rule for all situations. He suggested that the Planning Commission say to the Council that you need support in achieving your goals by making a 90-day review on establishments that clearly indicate conduct that is inappropriate. There are a lot of good businesses down there and I would support their existence and location.

**Paul Newman** (886 SE Bayshore Drive) said that Ms. Johnson-Pfeiffer has made some important points. He began thinking that this was a land use decision and that is one of the reasons he was here. He said Element is simply the first example of what can go wrong and dealing with that will prevent things from happening in the future. The second more important thing is the mixed use concept. He wanted Windjammer Park to be what it is suppose to be and the mixed use concept may be a more important thing. If you have retail below and people above and the business district evolves in that fashion I guarantee you Element and any other operation like it is going to become more and more of a thorn in everybody's paw. The more mixed use you have the bigger problem you are going to have and the more people you are going to see here inevitably. Other tavern owners have testified that it is the size and volume of it. Whether the owner is the corporate citizen he ought to be is a point we can debate but it is not the relevant part. The fundamental inherent quality of the size and scope of Element or any place like it is going to be at odds not just with Windjammer Park but with the mixed use development as a whole.

Mr. Oliver asked if the size limitation is adopted, how that would affect businesses that are in that district now. Mr. Kamak said that if we take that approach we would have to decide where the restriction would be, whether it will be in the land use section or will the restrictions be in the business license section. If current license holders will be impacted we may have to amend that section as well, to address the issue of what the consequences are for existing nightclub license holders. Either they will be non-conforming, which means that they can continue to exist in their current capacity but won't be able to expand any further, only minor modifications will be allowed. Any restrictions that we may consider will not directly impact existing uses.

Mr. Wallin commented that it comes down to the annual license review or the 90-day license review and that most of the other businesses conform to a certain standard and Element is not. He thought that the initial problem can be addressed through the license review process. Mr. Wallin asked if the license were revoked would they be forced to close their doors at 10 p.m. and would it alleviate the problem of 100 people coming out the door a two in the morning.

Mr. Kamak said that there was more frequent police reporting on Element and the police chief gives a report to the City Council and City Council gets to choose whether they want to renew the license. Mr. Kamak said he would have more information at the next meeting. Mr. Kamak said that Element could continue to operate as a business and if they don't have singing, dancing or a combination thereof after 10 p.m. they could continue to use the space, they just can't do it after 10 p.m., that is where they need the nightclub license. Mi Pueblo is a restaurant and can continue to operate as a restaurant without the nightclub license. The license is just another layer on top. If music and dancing is integral to the business and the license is removed, whether they will be able to sustain themselves is a question I cannot answer. When Element started they were a restaurant and then they had some recreation and amusement elements and then the space changed over time. That is the other challenge that we have with some of the uses in downtown. During certain hours they are a certain use and like to have tables and chairs and be a restaurant and when that is not sufficient to pay the bills they add on

extra uses of that space where they can move the tables and now they have room for dancing and music. The mixture of uses gives the business a choice on whether they want to apply for the nightclub license or not.

Mr. Oliver asked what size would not be disruptive to the residences.

**Kelly Beedle** (940 SE Pioneer Way) said that her place was 1,440 square feet which is plenty of room and she asked how the City could control the size of a building that someone buys or rents.

**Darnell Allen** (7-West business owner) said that his business is 1,400 square feet and hold 117 people maximum.

Mr. Oliver said that it sound like controlling 100 to 150 people is controllable and that anything above that is difficult. Mr. Allen agreed.

Ms. Johnson-Pfeiffer said that she would not be opposed to having nightclubs listed as a specific land use item with a strict definition that would need to be fleshed out.

Mr. Fakkema thanked the citizens for their participation and noted how important their input is.

Mr. Kamak echoed the same and said that at the next meeting we will try and address some of the concerns and provide options to consider.

Mr. Wallin asked for size information on all of the current nightclubs for the next meeting.

Mr. Fakkema closed the public meeting.

### **SIGN CODE – Public Hearing**

Mr. Spoo explained that the item before the Planning Commission tonight is simply a notification to Planning Commission that staff will be requesting that City Council renew the interim sign code for another six-month period. Staff will return to Planning Commission with the draft temporary sign code in May. The draft temporary sign code will include comments voiced at the March Planning Commission meeting.

Mr. Spoo recommended that Planning Commission hold a public hearing to take testimony regarding extending the interim sign code for an additional six-month period. Any public testimony will be included in information forwarded to the City Council. Another public hearing will be conducted before the City Council when extension of the interim sign code is considered.

Mr. Fakkema asked if the Planning Commission needed to recommend that the City Council extend the interim sign code. Mr. Spoo said that it isn't necessary because it the interim code has been in place for almost a year and they will only be extending it for another six months.

Mr. Fakkema opened the public hearing for public comment, seen none he closed the public hearing.

### **SHORELINE MASTER PROGRAM (SMP) – Public Meeting**

Mr. Spoo explained that the SMP project has been an ongoing since 2010. Staff have provided several updates to the Planning Commission in pre-meetings and at the regular meeting since 2010. This introduction marks the formal start of discussions and consideration of the shoreline

# **ATTACHMENT**

**3**

**City of Oak Harbor  
Planning Commission Memo**

Date: June 26, 2012

Subject: Restricting size of Nightclubs  
by zoning districts

**FROM:** Cac Kamak, AICP  
Senior Planner

**PURPOSE**

This is a continuation of the discussion on the request to consider restricting nightclubs based on size. The Planning Commission held a public meeting at the April 24, 2012 meeting and obtained public input on this issue. Speaking to this issues were several members in the public that represented residences adjacent to nightclub licensed establishments, nightclub licensed establishment owners and nightclub patrons.

**DISCUSSION**

In reviewing the public comments and input from the April 24<sup>th</sup> Planning Commission meeting, we can determine certain key factors. Listed below are some of these factors which may eventually help in regulating the impacts of large nightclubs:

- Understanding by the public that adoption of any new codes may not change the operations of current nightclubs
- Small scale establishments that have nightclub licenses such as the Oak Harbor Tavern and Seven West don't seem to be a negative impact on surrounding areas
- Only the large scale establishments that have a nightclub license seem to have impacts
- Almost all the complaints heard at the public meeting were related to a specific nightclub (the Element).
- The impacts identified were primarily about noise created by large groups of people, loud cars, trespassing, lack of respect and poor business practices
- The perceived lack of the Element owner's cooperation, neighborliness and initiative to make the business more compatible
- Preference for restricting specifically nightclubs as opposed to general uses in a district

It seems evident from the public input gathered that the scale of nightclubs and the number of people that they can accommodate has a direct nexus to the negative impacts on adjacent properties. Therefore the success of any solution would seem to be directly related to the ability of any proposed regulation to restrict the number of people that can patronize such an establishment on any given night. There are potentially several ways to address this issue and a few methodologies are discussed below.

1. **Regulate nightclubs as a land use:** There were several comments received at the public meeting on amending the zoning code to include nightclubs as a use in certain zoning districts and requiring such uses to obtain a Conditional Use Permit.

- Pros: Requiring a nightclub to obtain a conditional use permit is a public process that will require public hearings and therefore adjacent property owners will have an opportunity to comment on the permit. This will allow the Hearing Examiner to consider impacts and impose appropriate conditions on the use.
- Cons: It is possible for a nightclub to be approved if the proposed use meets all the identified criteria and still be an impact on the adjacent properties. It is then a difficult and legally challenging process to identify and document violations of conditions of approval and to revoke the conditional use permit.

Under the current structure of the code, where any use can obtain a nightclub license, defining nightclubs separately in the zoning ordinance will add an extra layer of confusion. For example, would a restaurant (currently listed as a use) wanting to apply for a nightclub license be considered as a restaurant or as a nightclub? The requirements for these from a building code and zoning code stand point are different and review of these permits can be challenging. Situations such as these can potentially create legal loop holes.

2. **Licensing uses by area:** This idea was included in the last memo to Planning Commission as a potential option to follow. This idea would keep all the current codes in place and add an area threshold to OHMC Chapter 5.22, Business Licenses & Regulation. For instance, only structures/spaces below 5000 square feet are eligible for nightclub licenses.
  - Pros: This will definitely limit the size of building or use that can apply for a nightclub license.
  - Cons: This option may not address the actual impact of large groups of people generated from nightclubs because occupancy limits vary based on primary use and interior features/fixtures of the building. Therefore, there is a high probability that a 5000 square feet space can vary in occupancy limit ranging from 50 to 500. For example, a restaurant under 5000 square feet and a occupant limit of 120 can apply for a nightclub license and so can a piano bar under 5000 square feet and a occupant limit of 400. So, although the square footage is the same, the occupancy limits can vary substantially.
3. **Licensing uses by occupant limit:** Using occupancy limits to restrict nightclubs was discouraged in the last memo to Planning Commission. However, further discussion with the City's Building Official has indicated that occupancy limits can be used creatively to regulate nightclubs. The use of occupancy limits was discouraged earlier because it would not be feasible to implement a regulation that limited nightclub license holders to certain occupancy limits. For example, if the City adopted a code to limit all nightclubs to an occupancy limit of 100, and if a restaurant that has an occupancy limit of 150 applies for a nightclub license, the City cannot now require the restaurant to maintain a occupancy limit of 100 which is less than the approved occupancy limit for the primary use (restaurant). However, the City can adopt a code that sets an occupancy limit threshold to apply for the nightclub license. For example, the code can restrict nightclub

licenses to only uses that have an occupancy limit of 100 or less. Therefore the restaurant in the above example that has an occupancy limit of 150 will not be able to apply for a nightclub License.

- Pros: This will get to the heart of the impacts created by large nightclubs and will therefore limit the concentration of people in one location.
- Cons: This will limit the buildings and uses that can apply for a nightclub license and has the potential to create many small nightclubs that can still have a cumulative impact in an area.

### **CONCLUSIONS**

From the above information it appears that regulating nightclub licenses based on an occupancy limit threshold may address the impacts that adjacent property owners and residences feel from large nightclubs. If the Planning Commission feels that option 3 is the best course of action, code amendments related to it would go directly to City Council since the amendment would be in OHMC Chapter 5.22, Business Licenses & Regulation, and not in OHMC Title 19, Zoning.

# **Minutes**

**Planning Commission  
July 24, 2012**

have that option out there and we have a responsibility as a community to think through these types of needs as well.

Mr. Wallin said that the Planning Commission should continue the public hearing to next month's regular Planning Commission meeting to allow the public an opportunity to review the staff report.

Mr. Powers said that continuing the hearing was possible and staff would mail the staff report to those wishing to receive a copy.

**ACTION: MR. OLIVER MOVED, MR. WALLIN SECONDED A MOTION TO CONTINUE THE FAIRWAY POINT PRD MODIFICATION TO CONSIDER ADU'S AGENDA ITEM TO NEXT MONTH'S PLANNING COMMISSION MEETING. MOTION CARRIED.**

Planning Commission took a 5 minute break.

#### **NIGHTCLUB ORDINANCE – Public Meeting**

Mr. Kamak reported that this is a continuation of the discussion to regulate the size of night clubs. Mr. Kamak highlighted several items discussed at the previous meeting and noted that the result of the public input at the last meeting was that the scale of nightclubs and the number of people that they can accommodate has a direct nexus to the negative impacts on adjacent properties. Therefore the success of any solution would seem to be directly related to the ability of any proposed regulation to restrict the number of people that can patronize such an establishment on any given night. Mr. Kamak presented the following methodologies for addressing the issue as well as some pros and cons for each:

1. **Regulate nightclubs as a land use:** Several comments received at the public meeting on amending the zoning code to include nightclubs as a use in certain zoning districts and requiring such uses to obtain a Conditional Use Permit.
  - Pros: Requiring a nightclub to obtain a conditional use permit is a public process that will require public hearings and therefore adjacent property owners will have an opportunity to comment on the permit. This will allow the Hearing Examiner to consider impacts and impose appropriate conditions on the use.
  - Cons: It is possible for a nightclub to be approved if the proposed use meets all the identified criteria and still be an impact on the adjacent properties. It is then a difficult and legally challenging process to identify and document violations of conditions of approval and to revoke the conditional use permit.

Under the current structure of the code, where any use can obtain a nightclub license, defining nightclubs separately in the zoning ordinance will add an extra layer of confusion. For example, would a restaurant (currently listed as a use) wanting to apply for a nightclub license be considered as a restaurant or as a nightclub? The requirements for these from a building code and zoning code stand point are different and review of these permits can be challenging. Situations such as these can potentially create legal loop holes.

2. **Licensing uses by area:** This idea was included in the last memo to Planning Commission as a potential option to follow. This idea would keep all the current codes in place and add an area threshold to OHMC Chapter 5.22, Business Licenses &

Regulation. For instance, only structures/spaces below 5000 square feet are eligible for nightclub licenses.

- Pros: This will definitely limit the size of building or use that can apply for a nightclub license.
- Cons: This option may not address the actual impact of large groups of people generated from nightclubs because occupancy limits vary based on primary use and interior features/fixtures of the building. Therefore, there is a high probability that a 5000 square feet space can vary in occupancy limit ranging from 50 to 500. For example, a restaurant under 5000 square feet and a occupant limit of 120 can apply for a nightclub license and so can a piano bar under 5000 square feet and a occupant limit of 400. So, although the square footage is the same, the occupancy limits can vary substantially.

3. **Licensing uses by occupant limit:** Using occupancy limits to restrict nightclubs was discouraged in the last memo to Planning Commission. However, further discussion with the City's Building Official has indicated that occupancy limits can be used creatively to regulate nightclubs. The use of occupancy limits was discouraged earlier because it would not be feasible to implement a regulation that limited nightclub license holders to certain occupancy limits. For example, if the City adopted a code to limit all nightclubs to an occupancy limit of 100, and if a restaurant that has an occupancy limit of 150 applies for a nightclub license, the City cannot now require the restaurant to maintain a occupancy limit of 100 which is less than the approved occupancy limit for the primary use (restaurant). However, the City can adopt a code that sets an occupancy limit threshold to apply for the nightclub license. For example, the code can restrict nightclub licenses to only uses that have an occupancy limit of 100 or less. Therefore the restaurant in the above example that has an occupancy limit of 150 will not be able to apply for a nightclub License.
- Pros: This will get to the heart of the impacts created by large nightclubs and will therefore limit the concentration of people in one location.
  - Cons: This will limit the buildings and uses that can apply for a nightclub license and has the potential to create many small nightclubs that can still have a cumulative impact in an area.

Mr. Kamak pointed out the occupancy limits of existing nightclub license holders as follows:

El Cazador - 291  
 Oak Harbor Tavern - 108  
 Mi Pueblo - 280  
 7 West – 165  
 Off the Hook – 201  
 Elements – 580 +219 (covered area)

Mr. Kamak concluded that it appears that regulating nightclub licenses based on an occupancy limit threshold may address the impacts that adjacent property owners and residences feel from large nightclubs. If the Planning Commission feels that Option 3 is the best course of action, code amendments related to it would go directly to City Council since the amendment would be in OHMC Chapter 5.22, Business Licenses & Regulation, and not in OHMC Title 19, Zoning.

Mr. Kamak asked the Planning Commission for their recommendation on the methodology that should be use.

Mr. Oliver pointed out that he was representing Mr. Kumberfelt in a couple of real estate transactions as well as a couple of people in the Bayshore Condominium Association. He asked the public if they cared to hear what he had to say.

Mr. Powers noted that this was not a quasi-judicial proceeding so if this is a code amendment it is legislative so this is not focused on a particular piece of property.

A member of the public asked if it was appropriate for Mr. Oliver to recuse himself from voting on the issue and that he would like to hear what Mr. Oliver has to say but was a little reluctant to have him voting on the issue.

Mr. Wallin asked if whatever is decided would have no effect on what Element has currently. Mr. Powers said that was correct. Mr. Neil said this would affect new nightclubs.

Mr. Wallin asked if the City be creating two different occupancy licenses if occupancy load was used as the criteria. Mr. Kamak said yes, we could regulate by zoning districts. You could have a limitation in occupancy depending on the zoning district.

Ms. Johnson-Pieffer asked if Option 3 would mean that a business would have to choose whether it was applying for a restaurant license or a nightclub license. Mr. Kamak said that when a business comes in for a building permit they are applying for a particular use such as a restaurant perhaps, the building official will review the plans against the building code and establish what the occupancy load for that restaurant is which sets the limit. If later the restaurant determines that they want live music and extend the use they would come in a get a license on top of what they already have. So the established occupancy load for the primary use would apply. Ms. Johnson-Pieffer asked if a 400 capacity restaurant was applying for a nightclub license restricted to capacity of 300 would they be denied a nightclub license. Mr. Kamak said they would have to be qualified to even apply. If they wanted the nightclub license they would have to redesign the interior space to meet the building code. They would have to make substantial changes to their capacity in order to accommodate the nightclub. Mr. Powers noted that there is no language crafted yet and that so far we are only discussing the methodology.

Mr. Oliver asked if an established nightclub were to sell and we have set the occupancy load at a lower level how will the new business owner be affected. Mr. Kamak said that the new owner would have to apply for a new license and in that case we can either write a code that would allow the continued use of existing businesses or we can do it by location. These are details that would need to be worked out if this methodology is chosen.

Ms. Johnson-Pieffer said she did not support the conditional use permit methodology (Option 1) because she felt it was too volatile and was not a predictable enough process for a business model to operate in.

Mr. Neil asked for public comment.

**Richard Everett** (651 SE Bayshore Drive) asked how the occupancy limits would be developed. Mr. Powers said that the occupancy load was a function of the building code and the fire code. It is prescribed based upon uses, exits, construction materials, hallways and a variety of life safety issues. Mr. Everett said that he felt an occupancy load of 800 was too high regardless of what the code says especially when patrons are drinking. He also pointed out the tragedy in

New Jersey in which many people were burned to death. Mr. Powers noted that the fire code was changed as a result of that tragedy. Mr. Powers also pointed out that the numbers are calculations and there is a difference between what the capacity is and what normally happens and the practical limitations. Mr. Powers said that we are not in a position to change what the occupancy loads are and this is not a subject of discussion this evening.

Mr. Everett said that in 2007 the condominium residents recommended that the City Council not authorize formation of the Element in that area and Captain Wallace made a statement for the record that he advised against it because it exposed the City to continuing problems from the mass of people that were going to be coming out of the club and the proximity of residents. Captain Wallace's arguments were brushed aside and here we are four years later with this dilemma still before us. He implored the City to use whatever power it has to do something constructive about it. The Element is impacting the residents and others in terms of health, welfare and economic loss. It should never have been and has got to cease as soon as possible.

**Billie Cook** (651 SE Bayshore Drive) said that a small business district was never meant to bear the use or the impact of a mega-nightclub in like this. She asked if this was the image that we want to project in our mixed use business district of large nightclubs that have violence, drunkenness and lewd behavior that goes on there all the time. In other parts of the county these mega nightclubs are referred to as "roadhouses" where the venue is very loud and excessive drinking and finding a date or "hooking up" is the goal. She stated that she didn't feel that people who frequent the "roadhouse" or mega-nightclub are criminals or wrong in any way but that she didn't want them in her front yard. She asked if we wanted more of them in an area that we present to tourists, many whom are family-oriented or older visitors that don't feel comfortable with that venue. Is this the image that we want to present to attract businesses and jobs? Ms. Cook believed that there should be a limit on the size of nightclubs in the Central Business District (CBD) because it is too small for the impact of the mega-nightclub. Along with a limitation on the size the CBD she hoped there would be some action taken to designate an area where the mega-club can operate.

Mr. Oliver asked what Ms. Cook thought the best occupancy limit would be for the CBD. Ms. Cook thought the limit should be 100 but maybe 200.

#### Planning Commission Discussion

Mr. Oliver said that the problem with anything that people do in the business world is what they offer and he wasn't sure how to address this issue. Mr. Kamak said that the nexus is large groups of people create impacts and that is what we are trying to address. Mr. Oliver asked if there was a count that can be gauged. Mr. Kamak said that if the Planning Commission chooses occupancy load as a methodology the mission would be to see how we can write a code that would address the impacts to prevent large users from obtaining nightclub licenses. The occupant loads are based on their current uses and not based on nightclubs. They are based their underlying use and that is a limitation established by the building code, so that will determine whether they can apply for a nightclub license or not. We are not limiting the number of people in a particular building by the nightclub license we are saying who can apply for it so larger users may not be able to apply for it. Or if the community wants to choose a special process that will accommodate the larger uses we would have to write that into the code as well.

Mr. Wallin noted that Mi Pueblo has a particular room that is designated as the nightclub area and asked if each of their rooms has a separate occupancy load. Mr. Powers said yes and that it is a combined occupancy. Mr. Powers restated that the mission tonight is to get a consensus

on which of the three options that the Planning Commission would like staff to pursue and then staff will start trying to answer these questions.

Ms. Johnson-Pieffer said that she liked the combination of zoning and occupancy but that she believed that it doesn't matter what zone you put the nightclub in you are going to have the same problem but we can't just say that we don't want them. There are members of the community that do use these establishments and we have a responsibility to allow these types of businesses to exist. Mr. Kamak said that he didn't think limiting the occupancy load is denying a certain type of business but just the size.

Mr. Neil said he would like staff to pursue Option 3 - Licensing uses by occupant limit method.

Mr. Wallin said he would like a combination of occupancy limit tied to the specific zones.

Mr. Oliver said he prefers the occupancy limit but not tied to the specific zone. Mr. Kamak said it was possible to have different occupancy limits in the different zoning districts and it will be a business license requirement. By saying in the license requirement that any business with an occupancy load of greater than 200 in the CBD is prohibited from applying for a license, that will limit the number in the CBD. You can say no business greater than 400 in the C-3 zone is permitted to apply for the nightclub license. You can have that staggering in varying zoning districts if you choose. So therefore you are not limiting or you can say in no zoning district shall be greater than 200, it is a community choice.

Ms. Johnson-Pieffer liked that approach and asked if you put a 100 person limit in the CBD and you had a business that broke their building into three separate rooms in which they had a hip-hop nightclub, a county/western club and a ballroom dancing each in a separate space that had the same 100 person occupancy limitation in each room and the same hours and they all left that facility at the same time we won't have accomplished anything. Mr. Kamak said that was correct and that is the risk. The entire downtown could have nightclubs but those businesses would have to be separate from a building code standpoint.

Mr. Oliver asked how the occupancy load is calculated. Mr. Kamak said it was calculated by each business. Each business has to be separate. We are not limiting by area within the building we are calculating by the entire business's occupancy load.

Mr. Neil confirmed with the Planning Commission that they were directing staff to pursue option 3 – Licensing uses by Occupancy Limit with some consideration to zoning.

Mr. Kamak said that since the Planning Commission wishes to consider zoning categories it will still be in the Planning Commission's realm to make a recommendation. If the Planning Commission had said just occupancy load and not zoning it would no longer have been a Planning Commission issue and only a City Council issue.

Mr. Oliver suggested thinking about barriers to mitigate sound also. Mr. Kamak said that could be considered as part of the licensing requirement.

Staff and Planning Commission discussed how to handle the remaining items on the agenda and decided to hold a special meeting on Monday, August 13, 2012 at 5:00 p.m. to discuss the Shoreline Master Program Update and the 2012 Comprehensive Plan Amendments.

**ADJOURN: 10:30 p.m.**

# **ATTACHMENT**

**4**

**City of Oak Harbor  
Planning Commission Memo**Date: September 25, 2012Subject: Restricting size of nightclubs by zoning districts**FROM:** Cac Kamak, AICP  
Senior Planner**PURPOSE**

This is a continued discussion on restricting nightclubs based on size. A request was made by residents living in the Central Business District to regulate the size of uses that have a nightclub license by zoning district. The request is primarily rooted in the impacts created by the large crowds that patronize such clubs. The request was also supported by the Oak Harbor Police Department.

**BACKGROUND**

The Planning Commission was introduced to this issue on April 24, 2012. The Commission also obtained public input on this issue at the meeting. Speaking to this issues were several members of the public that represented residences adjacent to nightclub licensed establishments, nightclub licensed establishment owners and nightclub patrons. The public comments provided at the meeting outlined the key issues related to the impacts of nightclubs. These comments are summarized below:

- An understanding by the public that adoption of any new codes may not change the operations of current nightclubs (non-conformities)
- Small scale establishments that have nightclub licenses such as the Oak Harbor Tavern and Seven West do not seem to be a negative impacts on surrounding areas
- Only the large scale establishments that have a nightclub license seems to have impacts
- Almost all the complaints heard at the public meeting were related to the Element nightclub.
- The impacts identified were primarily about noise created by large groups of people, loud cars, trespassing, and the seeming lack of respect and poor business practices
- The perceived lack of the Element owner's cooperation, neighborliness and initiative to make the business more compatible
- Preference for specifically restricting nightclubs as opposed to general uses in a district

It was evident from the public input gathered that the scale of nightclubs and the number of people that they can accommodate have a direct nexus to the negative impacts on adjacent properties. Therefore, at its June 26, 2012 meeting, the Planning Commission discussed various methodologies to determine how to address the impacts. The Planning Commission determined that limiting the size of business that can apply for a nightclub license based on the zoning district was a good methodology.

**DISCUSSION**

As discussed at the April 24, 2012 meeting, nightclubs are not uses regulated by Chapter 19, Zoning but are licenses regulated by Chapter 5, Business Licenses and Regulations. Chapter 5.22, Nightclubs, define the activities for which a license is required. These activities, such as music, singing and dancing (conducted after 10pm) can take place in bars, taverns, restaurants, brew pubs, cocktail lounges, places of entertainment etc., all of which are listed as specific uses in several of the city's zoning districts ranging from C1, Commercial Neighborhood to I, Industrial.

The first step in regulating nightclub licenses by zoning districts is to determine in which zoning district the city would like to prohibited uses from obtaining a Nightclub license. Due to the impacts of nightclub activities on surrounding properties, it is logical to prohibit them in the following zoning districts:

- R1, Single Family Residential
- R2, Limited Multiple-Family Residential
- R3, Multiple-Family Residential
- R4, Multiple-Family Residential
- RO, Residential Use
- C1, Neighborhood Commercial – This zoning district lists Restaurant as a conditional use and allows 20% of its seating for a bar. These kind of establishments (none exist currently -2012) can still have music, singing and dancing as long as it ceases at 10pm.
- C4, Highway Service Commercial – This zoning district lists Restaurants as a permitted use. The intent of this district is to provide uses that take advantage of access to the highway. This district is limited in area and is also located in and around the Accident Potential Districts that intends to limit the number if people that may work, live, shop etc. in the area.
- PF, Public Facilities

Therefore, the zoning districts that would permit them are:

- CBD, Central Business District
- C3, Community Commercial,
- C5, Highway Corridor Commercial
- PIP, Planned Industrial Park
- PBP, Planned Business Park
- I, Industrial

These zoning districts and their characteristics, along with their intent, can be used to establish a gradient for size regulations. The CBD, where pedestrian traffic is emphasized and large surface parking areas are discouraged, it would make sense to limit the size to smaller establishments, whereas in the I district, existing or minimum additional regulations may be sufficient to address the impacts created by large users.

So what should the limits be for uses in the various zoning districts that can obtain a nightclub license? There is no known study or published information on this topic since it is not a common practice to regulate licenses by occupancy limits<sup>1</sup>. Therefore there is no formula or guideline to indicate best case scenarios. However, the city can look at the current conditions and use that as a basis for regulations. The table below provides the occupancy limits of the uses that currently hold a nightclub license. It is clear that the Elements has a considerably larger occupancy limit than the other businesses and that large capacity seems to be the nexus to the impacts that adjacent property owners indicated in the many public input opportunities provided at the Planning Commission and City Council meetings.

<b>Business</b>	<b>Zoning District</b>	<b>Occupancy Limit</b>
El Cazador	C-5, Highway Corridor	291
Oak Harbor Tavern	CBD, Central Business District	108
Mi Pueblo	CBD, Central Business District	280
Seven West	CBD, Central Business District	165
Off the Hook	CBD, Central Business District	201
Elements	CBD, Central Business District	580+219(covered area)

The public input provided to the Planning Commission in May 2012, indicated that the other nightclubs in the Central Business District do not create nearly the impacts as the Elements did and that most of those impacts were tolerable. Since Mi Pueblo is the next largest business that has a nightclub license in the CBD, its occupancy limit may be a indicator for the limit on uses in the CBD.

Currently there are no businesses on the C-3, Community Commercial District that have a nightclub license. This district is the workhorse of all the commercial districts and developments in these districts tend to have more surface parking, access to the major streets etc. It should be noted that the C3 district does allow mixed use developments that include residential uses in upper floors and, and in several areas of the city, C3 zoned properties are located immediately adjacent to low density residential property. The community can consider maintaining the limits in this district similar to CBD or raise it to a higher limit.

The C5, Highway Corridor Commercial zone is intended for uses that are also heavy traffic users and generators and serve a regional population. El Cazador is located in this zone since the entire Kmart/Saars complex is zoned C5. Public comments received on the nightclub issue did not indicate any major impacts by this nightclub user. Similar to the CBD and C3 district, the C5 district does allow for mixed use developments with residential in the upper floors. Similar to the C3 district, the city can consider maintaining the limits in this district similar to CBD or raise it to a higher limit.

<sup>1</sup> An internet search was done to find articles and other cities zoning regulations that regulate nightclubs. Many cities zoning regulations indicate minimum distance separation from residential, school, parks etc. However, the search also indicated many cities facing the challenge of defining nightclubs since uses such as restaurants, taverns, bars etc. were creating similar impacts but were not regulated as nightclubs. Oak Harbor does not have this issue since nightclubs are licensed activities and not listed as a use in the zoning district.

Currently there are no nightclub license holders in the PBP, Planned Business Park and the PIP, Planned Industrial Park. These districts allow certain accessory uses (brew pubs, restaurants, theatres) that may be interested in a nightclub license. These districts do not permit residential uses. Therefore, these are districts where minimum restrictions may be adequate. This is not to say that large nightclubs won't have impacts on the adjacent uses. Noise impacts may not be detrimental, but other impacts such as vandalism, trespassing etc may be an issue.

Currently there are no nightclub license holders in the I, Industrial zone. However, this is one district where a limit may not be necessary since residential uses are not permitted in this district. This is not to say that large nightclubs won't have impacts on adjacent industrial uses. Noise impacts may not be detrimental, but other impacts such as vandalism, trespassing etc may be an issue.

Based on the above, a few suggestions for limits are provided below for consideration:

<b>Zoning District</b>	<b>Occupancy Limits</b>
Central Business District	300
C3, Community Commercial	300 or 30% increase to 400
C5, Highway Corridor Commercial	300 or 60% increase to approximately 500
PBP, Planned Business Park	300 or 60% increase to approximately 500
PIP, Planned Industrial Park	300 or 60% increase to approximately 500
I, Industrial	No limitations

The Planning Commission is requested to consider the above limitations and provide direction to staff. The code amendments required to implement these regulations will include these restrictions.

#### Non-conformities

If regulations were adopted with the above proposed limitations, at least one business (Elements) will become out of compliance with the new code. Since this code amendment falls under Title 5 Business Licenses and Regulations, the non-conforming use language in Title 19 Zoning will not apply. Therefore specific language would have to be drafted in Title 5 to address non-conformities.

Currently, nightclub licenses are renewed every year with annual background checks on the owners and review for compliance with state and city laws. With a limit on size for these licenses, language would have to be crafted to allow for the continued use of existing nightclubs that do not meet the requirements. However, change of owners requires an application for a brand new license. Since a non-conforming nightclub will now be larger than what the code permits, a new owner will not be able to apply for a nightclub license. Therefore, an existing non-conforming nightclub will never be able to transfer or endure a change in ownership. If the city would like to overcome this, language can be crafted with specific time lines, similar to how non-conforming land uses are regulated with an amortization period. The city may choose to allow transfer of ownership, within the amortization period. Some of these questions will also need some

legal review and advice prior to consideration for adoption. The City Council will ultimately have to decide on how the city should deal with the specifics of non-conforming licenses.

**CONCLUSIONS**

Staff requests that the Planning Commission provide some direction with respect to the limits on occupancy for the various zoning districts. The transfer of business licenses and related non-conformities are not directly linked to land use and therefore not considered under the authority of the Planning Commission. However, the Planning Commission may choose to formulate a recommendation on it.

# **Minutes**

**Planning Commission  
September 25, 2012**

**MOTION: MR. WALLIN MOVED TO RECOMMEND THAT THE ORDINANCE BE APPROVED AS PRESENTED. MS. JOHNSON-PHIEFFER SECONDED THE MOTION.**

Planning Commission Discussion

Ms. Johnson-Pfeiffer asked if was possible to allow ADU's in the four lots that do not abut existing homes.

Mr. Powers suggested adding "shall only occur on the four southern lots" to the end of Section Two. The lots would be identified by lot number.

**ACTION: MR. WALLIN WITHDREW HIS MOTION. MS. JOHNSON-PHEIFFER WITHDREW HER SECOND.**

**ACTION: MS. JOHNSON-PHEIFFER MOVED, MR. WALLIN SECONDED TO RECOMMEND THAT CITY COUNCIL APPROVE THE ORDINANCE WITH THE ADDED LANGUAGE THAT ADU'S SHOULD ONLY OCCUR ON THE FOUR SOUTHERN LOTS. MOTION CARRIED UNANIMOUSLY.**

Mr. Powers noted for the record that the four lots would be identified by lot number in the ordinance so that it is clear which lots the Planning Commission is referring to.

Mr. Fakkema returned for the remainder of the meeting.

**NIGHTCLUB ORDINANCE – Public Meeting**

Mr. Kamak reported that this is a continuing discussion that started in April of this year. Mr. Kamak presented the attached PowerPoint presentation (PC ATTACHMENT 1) which provided the information presented to-date, public input to-date and options considered. Planning Commission directed staff to pursue the option to license nightclubs by occupancy limit. Mr. Kamak presented the idea of licensing nightclubs by occupancy limit in the various zoning districts based on the intent of the zoning district as follows.

- CBD – pedestrian emphasis, mixed uses, residential – lowest occupancy limit (most restrictive)
- C3, - workhorse commercial, auto intensive, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
- C5, - Highway Corridor, auto oriented, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
- PIP, PBP – Planned Developments, no residential (less or no restrictions)
- I, - Industrial, no residential (less or no restrictions)

Mr. Kamak noted that there are no national standards or best solution and that the decisions are community driven.

Mr. Kamak displayed the occupancy limits of existing nightclub license holders to use as a starting point for considering what the occupancy limit should be in the various zoning districts:

- El Cazador – 291 – no impacts reported
- Oak Harbor Tavern – 108 – min impacts
- Mi Pueblo – 280 – less impacts

- 7 West – 165 – min impacts
- Off the Hook – 201 – min impacts
- Elements – 580 +219 (covered area) – most impacts

Mr. Kamak explained that occupancy limits are determined by the use and how the spaces in the building are allocated. Staff is proposing that if an occupancy limit is greater than the number that the Planning Commission selects tonight you cannot apply for a nightclub license. If a current business is more than the limit that the Planning Commission selects then they become non-conforming license holder. Specific language for dealing with non-conforming license holders would have to be written. Options are: allow them to continue to operating as they are in a non-conforming status as long as they remain under the same ownership or allow X number of years to become compliant (20 to 40 years). The specific language will require legal assistance and is not a land use issue and not under Planning Commission's review authority however, the Planning Commission can choose to make a recommendation or not to make a recommendation on this.

Mr. Fakkema asked for public input.

**Billie Cook** (651 SE Bayshore Drive) read her comments (PC ATTACHMENT 2).

**Vernon Meyers** (651 SE Bayshore Drive) said he received the staff report by mail and reviewed it and his first thoughts were that someone has really put a lot of work into this and he wanted to thank them for listening. He was happy that the City is aware of the situation and is responding to their concerns. He asked the Planning Commission, when making their decision, to think about how they would feel living next to the business.

#### Planning Commission Discussion

Mr. Fakkema asked if Industrial or Planned Industrial Park zoning districts are next to residential properties and if they are, should distance requirements be included. Mr. Kamak said that the zones are next to residential properties and that distance requirements could be included. The distance requirement can be tricky if there are several and whoever comes in last can't meet any of the distance requirements. This can be unfair. Many cities that have distance requirements are facing challenges.

Mr. Fakkema voiced concern about creating a situation where there will be an impact on residential uses. Mr. Kamak said that is the challenge, the fact that the property is zoned Industrial and that there are residential uses adjacent to it, that impact can happen whether we implement this code revision or not. Industrial properties exist with certain intensity or with the potential of certain intensity already so we are acting within that zoning intensity and classification.

Ms. Johnson-Pfeiffer asked if the Central Business District (CBD), C3 and C5 all allow mixed use. Mr. Kamak acknowledged that they do allow mixed use.

Mr. Kamak displayed the following table to give a starting point for setting a capacity limit for each zoning district

Zoning Districts	Starting Point	Planning Commission recommendation
Central Business District	300	?
C3, Community Commercial	300 or 30% increase to 400	?
C5, Highway Corridor Commercial	300 or $\pm$ 60% increase to 500	?
PBP, PIP	300 or $\pm$ 60% increase to 500 or No limitations	?
I, Industrial	300 or $\pm$ 60% increase to 500 or No limitations	?

Mr. Fakkema asked where the 30% was derived. Mr. Kamak explained that he increased it by 100 which equated to about 30%. From a gradation standpoint as you go higher in intensity that seems to be a reasonable increase between zoning districts.

Mr. Kamak displayed the zoning map to give the Commission an idea of where the zoning districts are located.

Mr. Powers asked Mr. Kamak if the Commissioners could assume that the numbers are a maximum number subject to the building to support that occupancy based upon the Building Code and the Fire Code. Mr. Kamak said that was true and the occupancy limits were not negotiable and are fixed by the Building Code and the Fire Code. This does not mean that just because we decide to set the maximum limit at 400 for a nightclub license that anyone that has a license can have up to 400 people, they are still limited by what the building occupancy load can support.

Ms. Johnson-Pfeiffer asked if there was a reason for recommending the incremental increases rather than setting at the same number anytime there is residential and commercial use mixed together. Mr. Kamak explained that the City of Oak Harbor zoning districts gradually increase in intensity so there is a natural understanding that the uses are also getting more intense and therefore it is logical to consider increasing intensity for such uses as well.

Commissioners discussed the commercial areas and the noise impacts on adjacent residential areas along Midway Boulevard. Mr. Kamak noted that if a business owner has an occupancy load of 600 in the CBD they won't qualify for a nightclub license if the City adopts a capacity limit of 300 in the CBD. Mr. Fakkema asked if that business owner were to split the building in half could he apply. Mr. Kamak said he could and the owner would have to submit the building plans, calculations and what the business is and then staff would calculate the new occupancy load based on the information provided and if that falls under 300 they can apply for a night club license.

Mr. Kamak also noted that the Planning Commission isn't obliged to use the progression and that they could choose another method.

Planning Commissioners discussed the police enforcement limitations if allowing a limit of 500 or no limitation. Mr. Kamak said that when we say no limitation we are not putting a restriction on the size of a business in the PBP, PIP and Industrial can apply. The size of a business will be market driven for a city of our size. Mr. Powers also noted that there are site development drivers such as parking and stormwater. The more parking the more stormwater will have to be handled. The number of parking spaces required is a function of the size of the building so there are more limitations than just what the occupant load is, there will be the economics of developing the site plus the economics of having a business.

Mr. Kamak also reminded the Planning Commission that the Code doesn't allow any new residential uses north of NE 16<sup>th</sup> Avenue.

Planning Commissioners settled on the following limitations and to not make a recommendation regarding dealing with non-conforming license holders:

Zoning District	Planning Commission Recommendation
Central Business District	300
C3, Community Commercial	300
C5, Highway Corridor Commercial	400
PBP, PIP	No limit
I, Industrial	No limit

#### **SHORELINE MASTER PROGRAM (SMP) UPDATE** – Public Meeting

Mr. Spoo explained that this is a continuing discussion of the SMP and the goal is to move toward making a recommendation to City Council tonight if Planning Commission is ready after the presentation and discussion.

Mr. Spoo asked Planning Commission what their preference was for a review of the chapters or to skip the review and go into the Department of Ecology (DOE) required changes and then to talk about chapters that the Commission may have questions on. Commissioners preferred a presentation of the DOE required changes.

Commissioners asked if the changes had to be made or could the City take a stand against something we don't agree with. Mr. Spoo said that other cities have taken a stand on some things and have been successful and unsuccessful at times but that DOE has final approval authority.

Mr. Spoo gave an overview of the Department of Ecology required changes. One of the changes regards how we are treating critical areas (wetlands, steep slopes, and fish and wildlife conservation areas along marine shorelines). DOE has requested that when we adopt the SMP to include our Critical Areas Ordinance (CAO) as an appendix. However there is one change. Initially DOE asked that a redline version be attached to the SMP but this creates confusion so staff is proposing to substitute the red-line version of the CAO with the CAO without the redline so there are not two versions of the CAO. So any planner or citizen can see that the CAO is adopted and attached to the SMP without any changes. If there are areas where the SMP and the CAO conflict, that will be called out in the body of the SMP. This occurs in Chapter 3, Section 4 of the SMP where the SMP talks about the CAO and how it relates to the SMP and item number 4 identifies exceptions in the CAO. Exceptions to applicability are:

# **ATTACHMENT**

**5**

**City of Oak Harbor  
Planning Commission Memo**

Date: September 24, 2013

Subject: Amendments to OHMC 5.22  
Nightclubs

**FROM:** Cac Kamak, AICP  
Senior Planner

**PURPOSE**

The City received a request in early 2012 to consider restricting nightclubs based on size. The request stemmed from the large number of people patronizing nightclubs creating impacts (noise, loitering, etc) to the surrounding uses. The request to amend the regulations was made by residents living in the Central Business District. The request was to regulate the size of uses that have a nightclub license by the zoning district in which they are located. The request was also supported by the Oak Harbor Police Department.

**BACKGROUND**

The Planning Commission was introduced to this issue on April 24, 2012 (Attachment 2). The Commission discussed the issue and received public input at the meeting. Speaking to this issue were several members of the public that represented residences adjacent to nightclub licensed establishments, nightclub licensed establishment owners and nightclub patrons. The public comments provided at the meeting outlined the key issues related to the impacts of nightclubs. These comments are summarized in the June 26, 2012 report to Planning Commission (Attachment 3)<sup>1</sup>.

It was evident from the public input gathered that the scale of nightclubs and the number of people that they can accommodate have a direct nexus to the negative impacts on adjacent properties. Therefore, at its July 24, 2012 meeting, the Planning Commission discussed various methodologies to determine how to address the impacts. The Planning Commission determined that occupancy limit was an effective methodology in limiting the size of business that can apply for a nightclub license based on the zoning district.

At its September 25, 2012 meeting, the Planning Commission further discussed the issue and provided input on the size thresholds of occupancy limits for nightclubs in various zoning districts. The thresholds based on the discussion are provided below:

<b>Zoning District</b>	<b>Occupancy Limits</b>
Central Business District	300
C3, Community Commercial	300
C5, Highway Corridor Commercial	400
PBP, Planned Business Park	No limitations
PIP, Planned Industrial Park	No limitations
I, Industrial	No limitations

<sup>1</sup> The June 26, 2012 Planning Commission was cancelled therefore the agenda packet for the June 26, 2012 was reused for the July 24, 2012 meeting.

The Planning Commission reports and associated minutes have been included as attachments to update the commission on this amendment.

**DISCUSSION**

While the Planning Commission was discussing the issue of nightclubs in relation to zoning districts, the City's legal department and the police department were looking at the licensing conditions and procedures of the nightclub ordinance. Several amendments were generated from their review and have been included with this review process. Their review includes amendments to issuance restrictions, license conditions, violations, expansion of the license revocation process to include proceedings with the Hearing Examiner and other clarifications.

Since the last time the Planning Commission reviewed the proposed amendments, a few nightclub license holder businesses have closed (Element, Seven West). Currently there are four businesses that have a nightclub license. They are Oak Harbor Tavern, Mi Pueblo, Off the Hook and El Cazador. The proposed amendments, if approved, will not impact any of these current businesses and all of them would be legally conforming (in terms of size) in their respective zoning districts.

**RECOMMENDATIONS**

- Conduct a public hearing.
- Recommend approval of the draft ordinance amending OHMC Chapter 5.22, Nightclubs, to the City Council.

Attachments

1. OHMC 5.22 Nightclubs – strikeout version with amendments
2. Planning Commission report April 24, 2012 and associated minutes
3. Planning Commission report June 26, 2012<sup>2</sup> and associated minutes of July 24, 2012
4. Planning Commission report September 25, 2012 and associated minutes

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<sup>2</sup> The June 26, 2012 Planning Commission meeting was cancelled therefore the June 26, 2012 packet was reused for the July 24, 2013 meeting.

**VOTE ON:**

**THE MOTION: MOTION CARRIED BY A VOTE OF FOUR IN FAVOR AND ONE OPPOSED TO RECOMMENDING OPTION A TO THE CITY COUNCIL.**

**ACTION: MS. PETERSON MOVED, MS. JENSEN SECONDED A MOTION TO RECOMMEND THAT THE CITY COUNCIL ADOPT THE DRAFT ELECTRONIC MESSAGE CENTER SIGN CODE. MOTION CARRIED BY A VOTE OF FOUR IN FAVOR AND ONE OPPOSED.**

**AMENDMENTS TO OHMC 5.22 – NIGHTCLUBS – Public Hearing**

Mr. Kamak displayed a Power Point presentation (Attachment 2) which reviewed previous discussions with the Planning Commission, options considered during the 2012 discussion which included licensing nightclubs by occupancy limit in the various zoning districts and the occupancy limits recommended by Planning Commission. Mr. Kamak concluded his presentation by recommending that the Planning Commission hold a public hearing and make a recommendation to the City Council.

Mr. Fakkema opened the public hearing.

**Kathy Harbour** (Bayshore Drive) spoke in favor of the proposed amendments and asked the Planning Commission to forward the Nightclub Ordinance to the City Council for immediate approval.

**Bill Christens** (651 SE Bayshore Drive) spoke in favor of the proposed amendments and asked the Planning Commission to forward the Nightclub Ordinance to the City Council for approval.

**Billie Cook** (651 SE Bayshore Drive) read her comments (Attachment 3).

**Deana Royal** (920 SE Pioneer Way) stated that she is a Pioneer Way business owner directly between Oak Harbor Tavern and Off the Hook. She spoke in favor of recommending approval to the City Council. She also stated that she would like to see a moratorium on future nightclub licenses in the Central Business District (CBD) due to vandalism and fights. The behavior is not conducive for families in the evening and nightclubs should be more restrictive in the CBD.

**Richard Everett** (651 SE Bayshore Drive) spoke in favor of recommending approval to the City Council with a suggested modification to delete the term “other similar health and safety impacts” repeated through the ordinance and replace it with “public health or safety, noise and traffic impacts”. At a minimum delete the “other similar” language.

Seeing no further public comment the public hearing was closed.

Mr. Freeman commented that large businesses can be run with minimal impact to their neighbors and that it has always been his feeling that it is a management issue.

**ACTION: MR. FREEMAN MOVED, MS. PETERSON SECONDED A MOTION TO RECOMMEND TO THE CITY COUNCIL TO APPROVE THE AMENDMENTS TO THE NIGHTCLUB ORDINANCE. MOTION CARRIED.**

**ECONOMIC DEVELOPMENT STRATEGY – Public Hearing**

Mr. Spoo displayed a Power Point Presentation and addressed questions and comments from the Planning Commission at the August 27<sup>th</sup> meeting which included the make-up of the

Request to restrict by size and zoning

## Nightclubs

## Nightclubs

- Regulated in Title 5 - Business Licenses and Regulation
- Defined - "Nightclub" means any "premises" as defined herein on which any music, singing, dancing or other combination of these activities is permitted as entertainment after 10:00 p.m., on one or more days per week. The playing of incidental music on any premises where the receipts for the sale of food constitute 75 percent or more of the gross business income of the establishment shall not be considered a "nightclub" for purposes of this chapter, unless an opportunity for social dancing is provided on the premises

## Nightclubs

- Nightclubs are specifically not listed as a use in Title 19 – Zoning
- Any permitted or conditional use can apply for a Nightclub license
- Nightclub License review process – Lead by the Chief of Police with a Public Hearing at the City Council
- License review is not a Land use review

## Nightclubs

- Initially six uses had Nightclub licenses – currently four
  - ~~Element – CBD (Central Business District)~~
  - ~~Seven West – CBD (Central Business District)~~
  - Off the Hook – CBD (Central Business District)
  - Oak Harbor Tavern – CBD (Central Business District)
  - Mi Pueblo – CBD (Central Business District)
  - El Cazador – C5, Highway Corridor Commercial
- These uses are classified as Bars, Taverns and Restaurants – all of which are permitted uses in their respective zoning districts
- Some of these uses can continue to exist without a Nightclub License

## ATTACHMENT 2

## Nightclubs

- Public Input on April 24 at Planning Commission
  - New code may not change the operations of current nightclubs
  - Small scale nightclubs don't seem to be an impact
  - All complaints were related to Element nightclub
  - Noise created by large groups, loud cars, trespassing, lack of respect and poor business practices
  - Perceived lack of owner's cooperation, neighborliness and initiative
  - Preference for restricting nightclubs specifically as opposed to general uses

## Nightclubs

- Nexus
  - Scale of nightclub has direct relation to the negative impacts on adjacent properties
- Options considered at the June 26<sup>th</sup> meeting
  - Regulate nightclubs as a land use
  - Licensing uses by area (sq. ft.)
  - Licensing by occupancy limit ✓

## Nightclubs

- Licensing nightclubs by occupancy limit in the various zoning districts?
  - Determine the districts where they should be prohibited
    - Primarily Residential– R1, R2, R3, R4
    - Mixed - RO, C1
    - Commercial – C4, Highway Service Commercial
    - Public – PF

## Nightclubs

- Licensing nightclubs by occupancy limit in the various zoning districts?
  - Regulate the zoning districts based on the intent of the zoning district
    - CBD – pedestrian emphasis, mixed uses, residential – lowest occupancy limit (most restrictive)
    - C3, - workhorse commercial, auto intensive, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
    - C5, - Highway Corridor, auto oriented, mixed uses, residential upper floors – same as CBD or higher (less restrictive)
    - PIP, PBP – Planned Developments, no residential (less or no restrictions)
    - I1, - Industrial, no residential (less or no restrictions)

## Nightclubs

- So what should the occupancy limit be in the various zoning districts?
  - Occupancy limits of previous and existing nightclub license holders
    - El Cazador – 291 – no impacts reported
    - Oak Harbor Tavern – 108 – min impacts
    - Mi Pueblo – 280 – less impacts
    - 7 West – 165 – min impacts
    - Off the Hook – 201 – min impacts
    - Elements – 580 +219 (covered area) – most impacts

## Nightclubs

- Occupancy limits suggested by Planning Commission

Zoning Districts	Starting Point	Planning Commission recommendation
Central Business District	300	300
C3, Community Commercial	300 or 30% increase to 400	300
C5, Highway Corridor Commercial	300 or ± 60% increase to 500	400
PBP, PIP	300 or ± 60% increase to 500 or No limitations	No limitations
I1, Industrial	300 or ± 60% increase to 500 or No limitations	No limitations

- Non of the existing licenses will become non-conforming with the currently suggested occupancy limit

## Nightclubs

- Formal adoption process
  - Public Hearing at the Planning Commission
  - Public Hearing at the City Council
  - Action by City Council

ATTACHMENT 5  
ATTACHMENT 3

I hope you will approve this agenda item and send it to the city council for further action.

I believe the city needs to take this proactive approach to locating large nightclubs in the city limits.

Why bother, when there are no large nightclubs presently licensed in the city. Well just like the expansion in size occurring in many businesses—Big K mart, Super Wal Mart, Cosco, Home Depot, entrepreneurs find bigger is often better in the Entertainment Industry too. Facilities with a large capacity of patrons, large size in square feet, many options under one roof, Bar, Nightclub, Billiards, Pool, live music, Dancing, Sports bar, stage shows, Gaming, card rooms, Karaoke—One stop shopping. Las Vegas discovered this years ago, and so have the Indian Casinos, even in a small town like Oak Harbor <sup>consolidation</sup> makes sense.

Large Mega Clubs are both Profitable and Popular. Especially popular with young people. Our Population has a large 19-29 years old component now, and that's slated to grow as more Navy personnel arrive. Therefore Oak Harbor will, I feel, have more applications for this type of business.

This agenda item is not designed to discourage these clubs but rather give guidelines to the business owners and help them avoid the pit falls that can occur when a business finds itself in unexpected conflict with other land users. By the city concerning itself with the locating of large nightclubs it will move to protect residential users, and other businesses as well as churches or youth organizations from adverse effects, due to close proximity to these large businesses, as well as protect the nightclub business from surprise and stress. By encouraging and thoughtfully siteting such clubs, patrons are able to remain in the city and not need to drive long distances to have entertainment they enjoy. Navy personnel frequenting a club in the PIP, PBP, or I zone remain close to home so to speak, I think the Navy would like that, especially if their personnel have a bit too much to drink, as a taxi is affordable and easy to obtain there, rather than being off island where they might elect to drive, dangerous, or be stuck.

I feel this is a very well prepared and thought out amending of the night club ordinance. It is not surprising that the ordinance, which was adopted in 2009, might need some modification now, based on the experience of the past few years. I urge you to approve it.

Thank you for holding this public hearing. Thank you also to the planning department staff, especially CAC who has done an outstanding job on this project.

Excerpt  
Meeting Minutes of October 15, 2013

**ORDINANCES AND RESOLUTIONS**

Ordinance 1672: Relating to Nightclubs and Amending Chapter 5.22 of the OHMC  
Development Services Director Steve Powers provided the staff report.

Speaking in support was:  
Gray Giordan  
Bill Christian  
Billie Cook

Jennifer Olson spoke in support of a change in the occupancy limit from 300 to 350 for the lounge she wants to open downtown.

Councilmember Hizon and Mr. Powers discussed club size and a related zoning map. Mr. Powers explained a map wouldn't show what size building could be in what zoning district because it's a function of the size of the building and interior space, not based on the building itself.

Mr. Powers clarified the City hasn't yet received an application, and therefore, couldn't speak directly to Ms. Olson's proposed plans.

Councilmember Hizon expressed her support with a change in occupancy so the City didn't preclude Ms. Olson from opening her establishment.

Councilmember Severns and Mr. Powers discussed the occupancy load in the one establishment in the C-5 zone and how the Planning Commission came to their recommendation.

Councilmember AlMBERG asked Ms. Olson to provide quantitative figures to support the occupant load she's requesting. Mr. AlMBERG stated he would be supporting the recommendation of the Planning Commission in the absence of substantial information.

Councilmember Paggao spoke in support of the Planning Commission's recommendation.

Mr. Powers responded to questions from Councilmember Campbell about enforcement stating there is a higher standard now than before.

Councilmember Munns asked about a variance and Councilmember Servatius suggested a period of probation.

Mr. Powers stated the code applies to the entire community and cautioned Council about discussing the ordinance in relation to the previous business at that location.

**Ordinance 1672 An Ordinance of the City of Oak Harbor Amending Oak Harbor Municipal Code Chapter 5.22 Nightclubs to Include Application Restrictions, Application Conditions, Revocation of License Procedures to Include Hearing Examiner and Other Clarifications**

**Motion:** Councilmember AlMBERG moved, seconded by Councilmember Munns, to adopt Ordinance 1672. The motion carried 6 to 1; Hizon opposed.

ORDINANCE NO. 1672

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 5.22 NIGHTCLUBS TO INCLUDE APPLICATION RESTRICTIONS, APPLICATION CONDITIONS, REVOCATION OF LICENSE PROCEDURES TO INCLUDE HEARING EXAMINER AND OTHER CLARIFICATIONS

WHEREAS, the City of Oak Harbor finds that restaurants and other businesses that offer food and drink in conjunction with musical entertainment at night have a tendency to create noise, traffic and similar public health and safety issue impacts on residential uses located in the vicinity of those businesses; and

WHEREAS, existing residential neighborhoods and potential residential uses are allowed in zones in which such businesses are also allowed in furtherance of a planning goal of mixed-use neighborhoods and economic diversity within the City; and

WHEREAS, response to resident complaints concerning noise, traffic and similar public health and safety impacts associated with those businesses requires significant expenditure of police and other City resources; and

WHEREAS, the City finds that the possible noise, traffic, or other similar public health and safety impacts could be addressed by regulating the size of uses that can apply for nightclub licenses based on the zoning district they are located in; and

WHEREAS, by addressing the size of nightclubs in zoning districts that permit residential uses, the City finds that the conflict among uses and neighbors may be minimized; and

WHEREAS, the expressive content of the musical entertainment should not be a consideration in determining the noise, traffic and similar public health and safety impacts on residential uses; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

**Section One.** Section 5.22.030 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.030 Issuance restrictions.**

No license shall be issued:

(1) If the nightclub serves alcohol, a person who has not resided in the state of Washington for at least one month prior to making application.

(2) To a person whose place of business is conducted by a manager or agent, unless such manager or agent also applies and qualifies for a nightclub license for the same business location.

(3) To a co-partnership, unless all the members thereof shall be qualified to obtain a license as provided herein.

(4) To a corporation or a limited liability company, unless it was created under the laws of the state of Washington or holds a certificate of authority to transact business in the state of Washington and all of the officers and directors shall be qualified to obtain a license as provided in this chapter. Such license shall be issued to the manager or other directing head of the corporation or company.

**Section Two.** There is hereby added a new Section 5.22.035 entitled "Application restrictions" to Chapter 5.22 of the Municipal Code as follows:

**5.22.035 Application restrictions.**

(1) No application for a nightclub license can be made for buildings and uses located in the R-1 Single Family, R-2 Limited Multi-Family, R-3 Multi-Family, R-4 Multi-Family, R-O Residential Office, C-1 Neighborhood Commercial, C-4 Highway Service, PF Public Facilities, OS Open Space or any other zoning district not specifically regulated below.

(2) An application for a nightclub license can be made for buildings and uses in the CBD Central Business District, CBD-1 Central Business District 1, CBD-2 Central Business District 2, and the C-3, Community Commercial District only if the occupancy limit for said building or use is less than 300 as determined by the Building Official and the Fire Chief.

(3) An application for a nightclub license can be made for buildings and uses in the C5, Highway Corridor Commercial District Buildings only if the occupancy limit for said building or use is less than 400 as determined by the Building Official and the Fire Chief.

(4) An application for a nightclub license can be made for any building and use in the PBP, Planned Business Park, PIP Planned Industrial Park and I Industrial zones.

**Section Three.** Section 5.22.040 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.040 Filing of application.**

Application for a nightclub license shall be made to the city clerk, together with a receipt from the city finance director or designee for the amount of the license in full. The license application shall include personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the primary use, zoning district and the business location upon which the nightclub activities will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the applica-

tion and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in OHMC 5.22.045, unless stayed by filing of a judicial appeal within 30 days of the city council decision appealed.

**Section Four.** Section 5.22.045 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.045 License conditions.**

- (1) Upon receipt of an application for a nightclub license, the city clerk shall transmit copies of the application to the chief of police, fire chief and the building official.
- (2) The fire chief and the building official shall determine if the application meets the provisions of 5.22.035.
- (3) The chief of police shall immediately conduct a WATCH criminal background check of the applicant(s).
- (4) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of a nightclub. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as a nightclub.
- (5) The chief of police shall report to the city council the result of his investigation and make recommendations concerning any conditions that should be placed upon the nightclub license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the premises to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the nightclub license.
- (6) The city council shall hold a public hearing with respect to the issuance of the nightclub license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the nightclub license. Unless the applicant is restricted from holding a nightclub license pursuant to OHMC 5.22.030, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the nightclub require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon.
- (7) The decision of the city council shall be the final decision of the city. No rights shall vest in a license issued under this chapter and all licenses are subject to modification and/or revocation in accordance with the provisions of this chapter.

**Section Five.** Section 5.22.065 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.065 Violation of license conditions.**

A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties or license revocation as follows:

- (1) A First violation of a license condition since initial license issuance: \$500.00 fine per violation;
- (2) A Second violation of any license condition since initial license issuance: \$750.00 fine per violation;
- (3) A Third violation of any license condition since initial license issuance: \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC.

Any fourth or greater violation of any license condition since initial license issuance shall be deemed a material violation and shall subject the license to revocation under the provisions of Section 5.22.070.

**Section Six.** Section 5.22.070 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.070 Revocation of license.**

The City reserves unto itself the power to revoke any license issued under the provisions of this chapter at any time upon a finding that:

- (1) The license was procured by fraud or false representation of fact; or
- (2) The applicant is barred from holding a nightclub license due to violation of any of the restrictions of OHMC 5.22.030; or
- (3) The conditions imposed upon the license pursuant to OHMC 5.22.045 were materially violated;
- (4) If the nightclub serves alcohol, material violation of any regulation of the Washington State Liquor Control Board or material violation of any condition imposed by the Washington State Liquor Control Board;
- (5) Conditions imposed upon the license pursuant to OHMC 5.22.045 have been violated more than three times with notices of violation issued with the civil offense sustained;  
or

(6) Fines levied for a sustained notice of violation under OHMC 5.22.065 are due and have been unpaid more than thirty (30) days since the date the fine became final.

Before revoking any such license, the City shall provide at least 10 days' written notice to the licensee of intent to seek revocation and the grounds for the same and schedule and hold a public hearing concerning such revocation before the City's hearing examiner. The jurisdiction of the Office of Land Use Hearing Examiner under Chapter 18.40 OHMC is hereby expanded to include jurisdiction over any revocation hearing under this section. The decision of the Examiner shall be a Type IV decision. The City shall bear the burden of proof at the public hearing. The licensee shall be entitled to be heard and introduce the testimony of witnesses. Members of the public may also be permitted to testify at such public hearing. The Examiner shall conduct the hearing and submit recommended findings of fact, conclusions of law and a decision to the City Council. Final action shall be by the city council. Any appeal of the final action of the City council shall be by writ of review under Chapter 7.16 RCW.

**Section Seven.** Section 5.22.080 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.080 License – Compliance required.**

In addition to the conditions imposed pursuant to OHMC 5.22.045, all nightclub licensees, if they serve alcohol, shall comply with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065.

**Section Eight.** Section 5.22.090 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.090 Revision of license conditions.**

The city council also reserves to itself the power to revise the conditions of the nightclub license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least 10 days' notice of a hearing before the city council to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of a nightclub license or any conditions placed thereon. The decision of the city council, after

a public hearing on the proposed change in conditions, shall be final, subject only to a writ of review before the Superior Court pursuant to Chapter 7.16 RCW.

**Section Nine.** Section 5.22.100 of the Oak Harbor Municipal Code last adopted by Ordinance 1544 Section 1 in 2008 is hereby amended to read as follows:

**5.22.100 Appeal to court.**

Appeal of any final decision of the city under this chapter shall be to superior court by writ of review pursuant to Chapter 7.16 RCW. The city's decision shall be stayed upon appeal filed within 30 days of the city council decision appealed, pending judicial review.

**Section Ten. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

**Section Eleven. Effective Date.** This Ordinance shall be in full force and effect five days after publishing.

PASSED by the City Council this 15<sup>th</sup> day of October 2013.

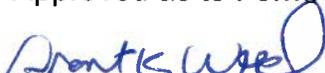
CITY OF OAK HARBOR

  
\_\_\_\_\_  
SCOTT DUDLEY, MAYOR

Attest:

  
\_\_\_\_\_  
Valerie J. Loffler, City Clerk

Approved as to Form:

  
\_\_\_\_\_  
Grant K. Weed, Interim City Attorney

Published: 10/19/13

# City of Oak Harbor City Council Agenda Bill

**Bill No.** 7.b.  
**Date:** January 7, 2014  
**Subject:** Ordinance No. 1657:  
Binding Site Plan Code  
Amendments

**FROM:** Steve Powers  
Development Services Director

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

\_\_\_\_\_ Scott Dudley, Mayor  
\_\_\_\_\_ Larry Cort, City Administrator  
\_\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

This agenda bill presents a draft ordinance to the City Council that amends Oak Harbor Municipal Code (OHMC) Chapter 21.80, Binding Site Plans, by establishing a process for altering or vacating previously approved binding site plans and making other related amendments.

**FISCAL IMPACT DESCRIPTION**

Funds Required: N/A

Appropriation Source: N/A

**CODE AMENDMENT REVIEW PROCESS**

Code amendments are categorized in the Municipal Code as a Review Process V. Review process V applies to all proposals which require a legislative decision by the City Council. Legislative actions include the adoption or amendment of land use regulations.<sup>1</sup> These regulations typically apply community wide. This type of action is in contrast to quasi-judicial actions which determine the legal rights, duties, or privileges of specific parties and specific properties.<sup>2</sup>

OHMC Sections 18.20.270(1) and (2) establish that amendments to land use codes require a public hearing before the Planning Commission with a recommendation to the City Council. The City Council may hold additional hearings. Traditionally, the Council has conducted its own hearing.

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<sup>1</sup> RCW 42.36.010

<sup>2</sup> RCW 42.36.010

# City of Oak Harbor City Council Agenda Bill

## SUMMARY STATEMENT

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan (BSP). This method is typically used in commercial shopping centers, industrial parks and residential condominiums where individual ownership of specific buildings or spaces is desired and where common ownership of other facilities is appropriate (e.g. driveways, parking spaces, landscaping, and stormwater facilities). Should a city choose to adopt such an ordinance it is required to provide a process for the alteration or vacation of BSPs. The proposed ordinance is intended to provide code language that specifically and adequately meets the requirements of State law. The proposed code amendment is intended to apply to all BSPs, those that exist today and those that may be approved in the future.

## BACKGROUND

The City's regulations for binding site plans can be found in OHMC Chapter 21.80. This chapter includes a section addressing under what circumstances proposed modifications to binding site plans may be considered. In the past, this section was cited when considering applications to alter (or amend) approved binding site plans. A review of the existing language found that it does not specifically or adequately address the alteration or vacation of previously approved BSPs. Staff notes this review was the result of past applications seeking to alter a previously approved binding site plan. It was also determined that other amendments to the code were necessary so that the BSP process is focused on the public (and not the private) interests of land division.

## DISCUSSION

### **Draft Code Amendment**

A number of amendments to OHMC Chapter 21.80 are proposed with this code amendment. Some introduce new requirements while others seek to clarify the existing ones. The table shown below summarizes some of the proposed amendments:

<b>Code Section</b>	<b>Amendment</b>
21.80.010	Adds reference to RCW Chapter 58.17 (plats-subdivisions-dedications).
21.80.020(3)	Deletes reference to use of this process for the purposes of boundary line adjustments.
21.80.030	Clarifies that lots created through this process are legal lots of record.
21.80.035	Clearly states that site plan approval under OHMC Chapter 19.48 is required for all lots created by BSP.
21.80.040	Clarifies that a BSP may be processed concurrently with or separate from a site plan processed under OHMC Chapter 19.48.
Various	Deletes references to 'preliminary' and 'final' BSP. Under the new code a BSP is proposed until it is approved under the standards of OHMC Chapter 21.80.
21.80.050	Deletes requirements not directly related to the division of land. Requires a BSP to be on a separate drawing from a site plan processed under OHMC Chapter 19.48.
21.80.120	Deletes reference to a 'binding schedule' and replaces it with reference to a development agreement approved pursuant to OHMC Chapter 18.30.

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Code Section	Amendment
21.80.160	Adds language that the BSP process shall not be used to create, alter, or eliminate any private property rights between owners arising solely as a result of the BSP.
21.80.170	Clarifies that this section may only be used in conjunction with the original approval of a BSP and only to modify the lot dimensional requirements for the property/zoning district.
21.80.180	Creates an alteration or vacation process for an approved BSP and the review criteria to be used by the City when considering such a request.

## **Alterations to Approved BSPs: Authority to Submit Application**

One of the major topics of discussion during this code amendment project was who has the authority to request an amendment to a binding site plan. The submittal of any type of permit or development application requires the signature of the property owner (or their authorized agent) seeking the permit or approval. An application to amend or vacate a part or parts of a BSP is no exception.

While it is clear that the signature of all property owners is required to submit the BSP application for its initial approval, the City's existing code is silent on the issue of who signs the application to amend an already approved BSP. Unlike that for plats, the State law that authorizes the use of BSPs as a form of land subdivision (RCW 58.17.035) is also silent on this issue. To assist the Planning Commission in formulating their recommendation to the Council on this topic, staff provided them a variety of background information. This information included the requirements for altering a subdivision as governed by RCW 58.17.215 and those for altering a condominium as governed by RCW 64.34 (for comparison purposes) and research into the requirements of other Washington cities with respect to BSP amendments.

## **PLANNING COMMISSION REVIEW**

As required by OHMC 18.20.270, the Planning Commission conducted a public hearing on the proposed code amendment. The hearing was opened on December 28, 2010, and then continued to January 25, 2011 and February 22, 2011. The Commission accepted testimony from the public and from staff on all three dates. The public testimony included those who believed that a BSP alteration application should require signature of all property owners within the originally approved BSP to those who believed it should only be required of the owner seeking the alteration.

The following are excerpts from the Planning Commission minutes of February 22, 2011 that address the topic of whose signatures are required to submit an application for alteration or vacation:

*There was lengthy discussion about defining "directly affected parties". Some Commissioners liked the idea of compiling a list of what is considered a "directly affected party". Others (sic) Commissioners were concerned about leaving something off that list because something could be presented which is outside of that list then you are stuck as to what to do. Mr. Powers explained*

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*that “affected property owners” may mean different things under different circumstances but it is staff’s job to read the code and to determine how that code may apply, but most importantly if someone thinks staff has done their job wrong there is an avenue to have staff’s decision reviewed through the Hearing Examiner. Mr. Powers said that staff is comfortable with the language because we think we can figure out how to apply the code in the variety of situations that may come up.*

*Commissioners expressed concern about being fair to all parties whether it is a matter of all parties except one agreeing to sign an alteration application therefore stopping the application or whether the majority forced their will on the minority who disagree with the alteration. There was also the view that “binding” means “binding” unless 100% of the owners agree. Commissioners agreed that distinguishing between public and private was a good idea.*

*Commissioners also raised the fact that parties not considered to be affected have ample opportunity to get involved in the public process and to give public testimony and also have the opportunity to appeal with the Hearing Examiner.*

After considering the public testimony and staff research, and after concluding their own deliberations, the Planning Commission recommended the following language to City Council:

**21.80.180(2)(c) Authority to submit alteration or vacation application.** The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.

After closing the hearing on February 22, 2011, the Planning Commission recommended approval of the attached draft code to the City Council (please see Attachment 1). At the Mayor’s direction, the Planning Commission was briefed by staff on the status of this project at their August 27, 2013 meeting.

Copies of the staff reports, attachments and minutes from all of the Planning Commission meetings can be found at:

[http://www.oakharbor.org/get\\_document.cfm?document=2555](http://www.oakharbor.org/get_document.cfm?document=2555)

### **CITY COUNCIL BRIEFINGS**

The draft code was discussed with the Governmental Services Standing Committee at their February 8 and March 2, 2011 meetings. The draft code was presented to the City Council at their May 29, 2013 workshop. Staff provided the Council an update on the project at their October 23, 2013 workshop.

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## **CONCLUSION**

RCW 58.17.035 grants cities the authority to adopt by ordinance procedures for the division of land by use of a binding site plan (BSP). Should a city choose to adopt such an ordinance it is required to provide a process for the alteration or vacation of BSPs. A review of the City's existing code found that it does not specifically or adequately address the alteration or vacation of previously approved BSPs. This review also determined that other amendments were necessary. The proposed amendments are intended to correct this situation and meet the requirements of State law. A key provision of the draft code establishes the property owner authority necessary to submit an alteration or vacation application.<sup>3</sup> If adopted the proposed code amendment will apply to all BSPs, those that exist today and those that may be approved in the future.

## **RECOMMENDED ACTION**

Adopt Ordinance No. 1657 as recommended by the Planning Commission.

## **ATTACHMENTS**

Draft Ordinance No. 1657

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<sup>3</sup> The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.

## ORDINANCE NO. 1657

AN ORDINANCE AMENDING OAK HARBOR MUNICIPAL CODE CHAPTER 21.80, ENTITLED “BINDING SITE PLANS” FOR THE PURPOSES OF: (1) SPECIFYING THAT LOTS CREATED THROUGH BINDING SITE PLANS ARE LEGAL LOTS OF RECORD, (2) CLARIFYING TYPES OF MODIFICATIONS TO BINDING SITE PLAN STANDARDS ALLOWED, (3) ESTABLISHING A PROCESS FOR ALTERING OR VACATING PREVIOUSLY APPROVED BINDING SITE PLANS, (4) REVISING THE REQUIREMENTS FOR A BINDING SITE PLAN MAP TO INCLUDE ONLY THOSE ITEMS RELATED TO LAND DIVISION PURPOSES AND (5) AMENDING OTHER CODE LANGUAGE FOR CLARITY.

WHEREAS, RCW 58.17.035 grants jurisdictions an alternative method for land division known as “binding site plans” and;

WHEREAS, RCW 58.17.035 requires that binding site plan ordinances contain provisions for alteration or vacation of binding site plan documents;

WHEREAS, the City’s existing Municipal Code does not presently have a specific process for altering or vacating approved binding site plans and;

WHEREAS, a SEPA environmental checklist was submitted for the proposed code changes and noticed in the Whidbey News Times on December 4, 2010 with a notice of application period ending on December 22, 2010 after a 15-day comment period and whereas the City received one e-mail comment, and;

WHEREAS, the City issued a SEPA Determination of Nonsignificance for the proposed code amendments on December 22, 2010 after a 15-day public comment and appeal period, as required by WAC Chapter 197-11-535 and whereas no comments or appeals were received during this period and;

WHEREAS, as required by RCW 36.70A.106, the City provided notice to the Department of Commerce on December 10, 2010 and received no comments from the Department; and;

WHEREAS, as part of an enhanced public participation process, the City provided notice of the Planning Commission public hearings to interested parties on December 17, 2010, January 7, 2011, and February 3, 2011 and that such notices were in addition to the usual notice procedures required for a code amendment.

WHEREAS, after due and proper notice, public hearings were conducted by the Planning Commission on December 28, 2010, January 25, 2011, and February 22, 2011 and a public hearing was held by the City Council on January 7, 2014.

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

**Section One.** Oak Harbor Municipal Code Chapter 21.80 entitled “Binding Site Plans” last amended by § 10 of Ordinance 1568 is hereby amended to read as follows:

**Chapter 21.80  
BINDING SITE PLANS**

**Sections:**

- 21.80.005** Title.
- 21.80.010** Binding site plans allowed.
- 21.80.020** Division of property.
- 21.80.025** Condominium binding site plan.
- 21.80.030** Effect.
- 21.80.040** Application.
- ~~**21.80.050** Procedure upon application.~~
- ~~**21.80.060**~~**21.80.050** Requirements for a binding site plan map.
- ~~**21.80.055**~~ **21.80.055** Site plan review required.
- ~~**21.80.070**~~**21.80.060** Certifications required.
- ~~**21.80.080**~~**21.80.070** Title report.
- ~~**21.80.090**~~ ~~Survey required.~~
- ~~**21.80.100**~~**21.80.080** Approval procedure.
- ~~**21.80.110**~~**21.80.090** Recording requirements.
- ~~**21.80.120**~~**21.80.100** Development requirements.
- ~~**21.80.130**~~**21.80.110** Standards for review of commercial binding site plan.
- ~~**21.80.140**~~**21.80.120** Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.
- ~~**21.80.150**~~**21.80.130** Performance guarantee requirements.
- ~~**21.80.160**~~**21.80.140** Warranty requirements for acceptance of final improvements.
- ~~**21.80.170**~~**21.80.150** Survey required.
- ~~**21.80.180**~~**21.80.160** Dedication – Warranty deed.
- ~~**21.80.200**~~**21.80.170** Requirements for Modification of binding site plan standards.
- ~~**21.80.180**~~ Alteration or vacation of an approved binding site plan.
- ~~**21.80.300**~~**21.80.190** Appeals to the hearing examiner.
- ~~**21.80.400**~~**21.80.200** Enforcement.

**21.80.005** Title

This chapter shall be entitled “Binding Site Plans.”

**21.80.010** Binding site plans allowed.

It is provided that, as an alternative to subdivision or short subdivision requirements under this title, and as allowed by RCW Chapter 58.17, divisions of land may be completed by binding site plans for classes of property specified in OHMC 21.80.020(1) through (43).

**21.80.020** Division of property.

Division of property by binding site plans may only be used for the following:

- (1) Divisions of land into lots classified for industrial or commercial use;
- (2) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land so long as the site plan complies

with all applicable mobile home park regulations and the zoning code;

- ~~(3) A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot which contains insufficient area and dimension to meet minimum requirements for width and area for a building site; and~~
- (4)(3) A division of land subject to Chapter 64.32 and 64.34 RCW as now in effect or hereafter amended so long as the site plan complies with the standards for condominium division under OHMC 21.80.140120.

### **21.80.025 Condominium binding site plan.**

Divisions of land into lots or tracts are allowed if:

- (1) A binding site plan may be used to divide property without proceeding through division by subdivision or short subdivision when the land or a portion of it is subject to either Chapter 64.32 or 64.34 RCW when the following conditions are met:
  - (a) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;
  - (b) The city has approved a binding site plan for all such land;
  - (c) Such approved binding site plan is recorded in the county or counties in which such land is located; and
  - (d) The binding site plan contains thereon the following statement:  
All development and use of the land described herein shall be in accordance with this binding site plan, as it may be amended with the approval of the city, town, or county having jurisdiction over the development of such land, and in accordance with such other governmental permits, approvals, regulations, requirements, and restrictions that may be imposed upon such land and the development and use thereof. Upon completion, the improvements on the land shall be included in one or more condominiums or owned by an association or other legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest. This binding site plan shall be binding upon all now or hereafter having any interest in the land described herein.
- (2) The binding site plan may, but need not, depict or describe the boundaries of the lots or tracts resulting from subjecting a portion of the land to either Chapter 64.32 or 64.34 RCW.
- (3) The binding site plan for condominiums shall be deemed approved if:
  - (a) Done in connection with the final approval of a subdivision plan or planned unit development with respect to all of such lands;
  - (b) Done in connection with the issuance of a building permit or final certificate of occupancy.

### **21.80.030 Effect.**

Upon approval and recording of a binding site plan, any and all sale or leases of lots within the property covered by the site plan shall be in accordance with the binding site plan. Lots, parcels, or tracts created through the binding site plan procedure shall be legal lots of record. Such lot

lines as are shown on the binding site plan shall be lot lines for setback purposes under the zoning code in effect at the time the issue of setbacks is to be determined. A binding site plan does not authorize construction. Construction is permitted upon approval of construction and building permits that implement the binding site plan.

**21.80.035 Site plan review required.**

A site plan pursuant to Chapter 19.48 is required for every lot created under this chapter.

**21.80.040 Application.**

An application for a binding site plan shall be submitted on a form prescribed by the Director and shall include all other requirements as specified in this Chapter. A binding site plan application may be processed concurrent with, or separate from, a site plan review application processed under Chapter 19.48.

An applicant for site plan approval under Chapter 19.48 OHMC may at the time of application for site plan review also request that the site plan be processed as a binding site plan to allow the division of property into separate tracts, lots or parcels.

**~~21.80.050 Procedure upon application.~~**

At the same time or after obtaining site plan approval, the applicant shall submit a preliminary binding site map meeting the requirements of this chapter and the standards for development as set out in Chapter 21.40 OHMC.

**~~21.80.060~~21.80.050 Requirements for a binding site plan map.**

The applicant shall submit two exact duplicate binding site plan maps meeting the following requirements. The final~~recorded~~ binding site plan shall be drawn on mylar drafting film having dimensions of 24 inches by 36 inches and must include the following:

- (1) The name of the binding site plan;
- (2) Legal description of the entire parcel;
- (3) The date, scale and north arrow;
- (4) Boundary lines, right-of-way for streets, easements and property lines of lots and other sites with accurate bearings, dimensions or angles and arcs, and of all curve data;
- (5) Names and right-of-way widths of all streets within the parcel and immediately adjacent to the parcel. Street names shall be consistent with the names of existing adjacent streets;
- (6) Number of each lot and each block;
- (7) Reference to covenants, joint use, access easements, or other agreements ~~either~~ to be filed separately ~~or on the binding site plan~~ must be referenced on the binding site plan;
- ~~(8) Zoning setback lines and building envelope sites where applicable;~~
- (9) Location, dimensions and purpose of any easements, noting if the easements are private or public;
- ~~(10)~~ Location and description of monuments and all lot corners set and found;
- ~~(11)~~ Datum elevations and primary control points approved by the engineering department. Descriptions and ties to all control points shall be shown with dimensions, angles, and bearings;
- ~~(12)~~ A dedicatory statement acknowledging public and private dedications and grants;
- ~~(13) Parking areas, general circulation, and landscaping areas where applicable;~~

- ~~(14) Proposed use and location of building with dimensions where applicable;~~
- ~~(15) Loading areas where applicable;~~
- ~~(16)~~(12) Utilities; and
- ~~(17)~~(13) Other restriction and requirements as deemed necessary by the city.

The binding site plan map shall be on a separate sheet(s) from the site plan processed under Chapter 19.48.

#### **21.80.070060 Certifications required.**

- (1) A certificate is required giving a full and correct description of all lands divided as they appear on the binding site plan, including a statement that the division has been made with the free consent and in accordance with the desires of the owners. If the binding site plan is subject to a dedication, the certificate or a separate written instrument shall also contain the dedication of all streets and other areas to the public, to an individual or individuals, religious society or societies or to any corporation, public or private as shown on the binding site plan and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of the road. The certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the land divided and recorded as part of the final binding site plan.
- (2) A certification by a licensed surveyor is required, licensed in the state that the binding site plan survey is accurate and conforms to the provisions of these regulations and state law.

#### **21.80.080070 Title report.**

All binding site plans shall be accompanied by a title company certification (current within 30 days from filing of the binding site plan) confirming that the title of the lands as described and shown on the binding site plan are in the name of the owner(s) signing the binding site plan.

#### ~~21.80.090 Survey required.~~

~~A survey must be performed for every binding site plan by or under the supervision of a state of Washington registered land surveyor.~~

#### **21.80.100080 Approval procedure.**

- (1) Binding site plan approval shall be a Type II review process.
- ~~(2) As part of or after site plan review as provided under OHMC Title 19, applicants for final binding site plan approval shall file the required documents meeting all the requirements of this chapter with the development services department.~~
- (32) The director shall review the final binding site plan application and circulate it to other city departments to determine whether the requirements of this chapter and preliminary approval have been met.
- (43) If the director and city engineer determine that the requirements are met, they shall approve and sign the binding site plan.
- (54) If either the director or the city engineer determine that the requirements have not been met, the final binding site plan shall be returned to the applicant for modification,

correction, or other action as may be required for approval.

- (65) If the conditions have been met, the director and city engineer shall inscribe and execute their written approval on the face of the binding site plan.

**21.80.110090 Recording requirements.**

- (1) When the city finds that the binding site plan proposed for final approval meets all the conditions of final approval, then the applicant shall take both original mylar binding site plan maps to the Island County auditor. One of the originals of said binding site plan shall be recorded with the Island County auditor. The other will be stamped by the auditor and forthwith returned to Oak Harbor. In addition, the applicant will furnish the city with one paper copy of the mylar recorded by the auditor. In addition, one paper copy shall be furnished by the applicant to the Island County assessor.
- (2) The applicant must provide the city with proof of proper filing and recording before the binding site plan becomes valid. This proof shall include a certification by the applicant and the surveyor certifying that the binding site plan has not been altered between the time it was approved for recordation and the time of actual recordation by the Island County auditor.

**21.80.120100 Development requirements.**

All development must be in conformance with the recorded binding site plan.

**21.80.130110 Standards for review of commercial and industrial binding site plans.**

The following standards shall apply to commercial and industrial binding site plans:

- (1) Division lines between lots in commercial binding site plans shall be considered lot lines under Oak Harbor zoning code.
- (2) Each such tract or lot created by such binding site plan shall have one designated front lot line and one rear lot line including those which have no street frontage.
- (3) All tracts, parcels and lots created by a binding site plan shall be burdened by an approved maintenance agreement maintaining access to the various lots, tracts and parcels and for the cost of maintaining landscaping and other common areas.
- (4) When any lot, tract or parcel is created without 30 feet of street frontage, easements shall be given to the city allowing access for police, fire, public and private utilities along the access roads to each tract, lot or parcel.
- (5) If the city elects, the city shall be granted a power to maintain the access easements and file liens on the property for collection of the costs incurred in maintaining such way. The power to maintain such access ways shall impose no duty on the city to maintain the access way.
- (6) The binding site plan shall contain a provision that the owner's failure to keep the fire access lanes open and maintained may subject the property to being abated as a nuisance and the city may terminate occupancy of such properties until the access easement ways are adequately maintained.
- (7) Freestanding signage may be off of the tract, parcel or lot where the business is located as long as sign requirements are met within the area encompassed by the binding site plan.
- (8) Sufficient parking for each use must be located on the lot where the use is located or joint parking agreements must be recorded by the owners for the area of the binding site plan. Prior to building permit approval, parking agreements will be reviewed by the director.

- (9) Landscaping requirements will be met for each phase of the binding site plan. Landscaping requirements may be met for an area of one or more lots as long as a joint maintenance agreement is recorded or included in declaration of covenants

**21.80.140120 Standards for binding site plans for condominium developments regulated by Chapter 64.32 and 64.34 RCW.**

Development standards for condominiums including residential units or structures shall meet either the standards set out in subsection (1) or (2) of this section:

- (1) All lots and development shall meet the minimum requirements of this title as now in effect or hereafter amended. Phase or lot lines shall be used as lot lines for setback purposes under the zoning code.
- (2) Condominiums may be developed in phases where ownership of the property is unitary but all structures may not be completed at the same time or differing lenders finance separate structures or areas of the property. The following conditions shall apply to phased condominiums:
  - (a) All areas not within the building envelope are subject to joint use and are burdened by a joint obligation to maintain any and all access ways. The city shall have no obligation to maintain such access ways.
  - (b) The city of Oak Harbor shall have an easement for access along and over access ways and parking areas to allow police, building, fire and utility department personnel to inspect and observe such property, buildings and activities on the property as well as for providing emergency and law enforcement services and easements for utilities over and under such access ways.
  - (c) Reciprocal easements for parking shall be provided to all tenants and owners.
  - (d) The developer has ~~submitted~~ entered into a binding schedule development agreement pursuant to Chapter 18.30 for completion of all phases.
  - (e) Phase lines must be treated as lot lines for setback purposes under the zoning code unless the property owner will place a covenant on the binding site plan that the setback area for built phases, contained in all unbuilt phases, shall become common areas and owned by the owners of existing units in the built portions of the condominium upon the expiration of the completion schedule described in ~~subsection (2) of this section~~ the development agreement pursuant to Chapter 18.30.
  - (f) All public improvements are guaranteed by bond or other security satisfactory to the city engineer or his designee.
  - (g) All built phases in a condominium binding site plan shall have joint and several obligation to maintain landscaping through covenants or easements or both to assure that the responsibility is shared among the various owners.

**21.80.150130 Performance guarantee requirements.**

- (1) In lieu of completing the required public improvements prior to approval of the binding site plan, the applicant may request ~~final~~ approval, subject to the approval of a suitable guarantee. The guarantee must be in a form acceptable to the city and in an amount commensurate with improvements to be completed. The amount of the guarantee is established at 100 percent of the cost of the city having to construct the improvements plus 20 percent for contingency. The guarantee amount will require yearly review by the

city and the applicant will be required to revise the guarantee amount to reflect current inflation rate. Based on the revised amount, the applicant will resubmit suitable guarantee to the city. Also, the guarantee will be restricted as far as the amount of permissible time in which the improvements must be completed. If not a regular surety bond from an acceptable state approved surety, the guarantee must be in a form acceptable to the city attorney.

- (2) Guarantee funds will not be released by the city unless approval has been received from all applicable departments that are responsible for acceptance and/or maintenance of such improvements. Partial releases will not be allowed.
- (3) All improvements begun by the applicant must be completed. Once the applicant has begun making improvements, the applicant shall not be eligible for submitting a guarantee to the city to cover the incomplete improvements.
- (4) Public improvements must be in place at time of certificate of occupancy or acceptable assurances for completion with a temporary certificate of occupancy.

**21.80.140160 Warranty requirements for acceptance of final improvements.**

At the time of final acceptance of the improvements, the applicant shall provide to the city a one-year warranty guarantee at 10 percent of the established final cost of the public and/or off-site improvements which must be acceptable to the city.

**21.80.170150 Survey required.**

- (1) A survey must be performed for every binding site plan. The survey required must be conducted by or under the supervision of a Washington State registered land surveyor. The surveyor shall certify on the binding site plan that it is a true and correct representation of the lands actually surveyed and the survey was done in accordance with city and state law.
- (2) In all binding site plans, lot corner survey pins must be set before final approval can be granted.
- (3) In all binding site plans, perimeter monuments must be set before final approval can be granted.
- (4) In all binding site plans, control monuments must be set before final acceptance of public improvements. Performance guarantees must include the installation of all control monuments. Control monuments must be installed per city design and construction standards.
- (5) In all binding site plans, where final approval is to be granted by the acceptance of a performance guarantee, lot corner and perimeter monuments must be set. The performance guarantee must include the resetting of any monument that has been lost during construction of public improvements

**21.80.180160 Dedication – Warranty deed.**

Any dedication, donation or grant to the City as shown on a binding site plan shall be considered a statutory warranty deed to the grantee for the use intended. The binding site plan processes of this chapter shall not be used to create, alter, or eliminate any rights in property arising solely between private owners of property within the binding site plan. All such private dedications, donations or grants shall be separately recorded with the county auditor and reference thereto made on the binding site plan.

**21.80.200170 Requirements for modification of binding site plan standards.**

- (1) ~~Any applicant can request and make application to the city requesting~~ As part of the approval of an original binding site plan an applicant may request a modification of up to five percent from a lot dimensional requirement (setbacks, lot size, length, width, or lot coverage) of ~~OHMC 21.80.130 or 21.80.140 or OHMC~~ the applicable zoning standards found in Title 19 OHMC so long as the maximum density allowed in the zone is not exceeded.
- (2) Such request for modification shall be submitted by the applicant concurrently with the binding site plan application and considered by the director as ~~an administrative~~ a Type I decision.
- (3) The modification shall not be granted by the director until the following facts have been established:
  - (a) There are exceptional circumstances of conditions such as: locations of existing structures, lot configuration, topographic or unique physical features that apply to the subject property which prohibit the applicant from meeting the standards of this chapter;
  - (b) The authorization of the modification or variation will not be detrimental to the public welfare or injurious to property in the vicinity or zone in which the property is located;
  - (c) A hardship would be incurred by the applicant if he/she complied with the strict application of the regulations;
  - (d) Landscaping requirements are not thereby reduced.

**21.80.180 Alteration or vacation of an approved binding site plan.**

The purpose of this section is to provide a process by which changes (alterations or vacations) to a recorded binding site plan may be considered. Changes processed under this section must be related to the land division purposes of a binding site plan. Alteration or vacation of all or a portion of an approved binding site plan may be considered subject to the provisions of this section.

**(1) Definitions.**

- (a) Alteration: for the purposes of this section, an alteration is a change to the recorded binding site plan map that is related to or consistent with the land division purposes of this chapter and that generally relates to the items described in Section 21.80.050(4), (8), (12) or (13). For binding site plans approved prior to January 7, 2014, alterations may also be considered to the following elements of a binding site plan: zoning setback lines, building envelopes, parking areas, general circulation, landscaping areas, proposed use and location of buildings and loading areas.
- (b) Vacation: for the purposes of this section, a vacation is the removal of a property(s) from a binding site plan so that the obligations created under the binding site plan no longer apply to that property(s). Vacation may apply to a portion or the entirety of a binding site plan.

**(2) Submittal requirements for alterations and vacations.**

- (a) Application form. An application shall be submitted on a form provided by the

Director.

- (b) Title report. All applications to alter or vacate a binding site plan shall be accompanied by a title company certification (current within 30 days from filing of the application) confirming that the title of the lands as described and shown on the application are in the name of the owner(s) signing the application.
  - (c) Authority to submit alteration or vacation application. The alteration or vacation application shall contain the signatures of all those owners of lots who are directly affected by the proposed alteration or vacation.
  - (d) The alteration or vacation application for a binding site plan shall contain all materials required of binding site plan applications as specified in this chapter unless otherwise waived by the Director.
- (3) Criteria for Review.
- (a) The proposed alteration shall meet the requirements of this Chapter applicable to the underlying binding site plan.
  - (b) Any alteration of an approved binding site plan affecting an unexpired development agreement may, in the discretion of the Director, invalidate the existing development agreement and require negotiation of a new development agreement pursuant to Chapter 18.30. The new development agreement shall vest to the City development regulations in effect at the time the Director has determined the application for alteration to be technically complete in accordance with the requirements of Chapter 18.20.
  - (c) The proposed vacation shall not cause the remaining portions of an approved binding site plan to fail to meet the requirements of this Chapter. Any non-conformities created by such a vacation must be remedied prior to final approval of the vacation. Property within a binding site plan subject to an approved vacation shall constitute one lot, and the balance of the approved binding site plan shall remain as approved.
- (4) Review process. Applications for alteration or vacation of a binding site plan shall be processed under a Review Process II according to Chapter 18.20.

**21.80.300190 Appeals to the hearing examiner.**

- (1) An appeal of the decision relating to the binding site plan shall be made to the hearing examiner in accordance with the procedures set out in Chapter 18.40.
- (2) The written appeal shall include a detailed explanation stating the reason for the appeal. The decision of the hearing examiner shall be the final action.

**21.80.400200 Enforcement.**

The auditor shall refuse to accept for recording any binding site plan which does not bear the verification of approval as defined by this chapter. The city attorney is authorized to prosecute violation of this chapter and to commence actions to restrain and enjoin a violation of this chapter and compel compliance with the provisions of this chapter. The costs of such action shall be taxed against the violator.

**Section Two.** Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

**Section Three.** Effective Date. This Ordinance shall be in full force and effect five days after publishing.

PASSED by the City Council this 7<sup>th</sup> day of January 2014.

CITY OF OAK HARBOR

\_\_\_\_\_  
SCOTT DUDLEY, MAYOR

Attest:

Approved as to Form:

\_\_\_\_\_  
Anna Thompson, City Clerk

\_\_\_\_\_  
Grant K. Weed, Interim City Attorney

Published: \_\_\_\_\_

# City of Oak Harbor City Council Agenda Bill

**Bill No.** 7.c.  
**Date:** January 7, 2014  
**Subject:** Public Hearing- Surplus Refuse Trucks

**FROM:** Cathy Rosen, Public Works Director

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

The purpose of this agenda bill is to hold a Public Hearing, receive public testimony and consider adopting Resolution 14-01 declaring refuse trucks acquired by the utility funds to be surplus property.

**FISCAL IMPACT DESCRIPTION**

Funds Required: N/A  
Appropriation Source: N/A

**SUMMARY STATEMENT**

At the meeting on December 17, 2013, the City Council approved the purchase of two new Peterbilt refuse trucks.

Per RCW 35.94.040, a public hearing is required to adopt Resolution 14-01 in order to surplus city property acquired by the utility funds.

The following trucks will be traded in after the two new refuse trucks have been received:

- #46 2004 Peterbilt/Wayne Side Arm Loader
- #64 2006 Peterbilt/Wayne Side Arm Loader

The following trucks are not currently being utilized and/or are no longer needed and will be traded in as well:

- #45 2004 Peterbilt/Wayne Side Arm Loader
- #59 1999 Crane Carrier Yard Waste Truck

**STANDING COMMITTEE REPORT**

This item was reviewed at the City Council workshop on December 17, 2013.

**RECOMMENDED ACTION**

Hold the public hearing, consider public testimony and approve Resolution 14-01.

**ATTACHMENTS**

- Resolution 14-01

RESOLUTION NO. 14-01

A RESOLUTION OF THE CITY OF OAK HARBOR, WASHINGTON, DECLARING CERTAIN OBSOLUTE PERSONAL PROPERTY SURPLUS AND AUTHORIZING DISPOSAL

WHEREAS, it has been determined that the City has no further use of certain obsolete personal property items; and

WHEREAS, the City Council has determined that these items are surplus to the needs of the City and are no longer required; and

WHEREAS, the fair market value, if any, is determined for the surplus property, and its disposal will be for the common benefit; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oak Harbor that:

- 1) Based upon the findings and the recommendations of the City Council, certain items of obsolete personal property belonging to the City of Oak Harbor, as shown below, are declared to be surplus to the foreseeable needs of the City.

<u>VEHICLE DESCRIPTION</u>	<u>VIN #</u>
#45 2004 Peterbilt/Wayne Side Arm Loader	1NPZLT0X74D715524
#46 2004 Peterbilt/Wayne Side Arm Loader	1NPZLT0X94D715525
#59 1999 Crane Carrier Yard Waste Truck	1CYAAA272TT040891
#64 2006 Peterbilt/Wayne Side Arm Loader	1NPZL00X36D716669

- 2) It is deemed to be for the common benefit of the residents of the City to dispose of said property.
- 3) The Mayor or his designee is authorized to dispose of items listed above in a manner that will be to the best advantage and in a manner which will net the greatest amount to the City of Oak Harbor.

PASSED and approved by the City Council this 7th day of January, 2014.

CITY OF OAK HARBOR

\_\_\_\_\_  
SCOTT DUDLEY, MAYOR

Attest:

\_\_\_\_\_  
Anna Thompson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Grant Weed, City Attorney

City of Oak Harbor  
City Council Agenda Bill

Bill No. 7.d.  
Date: January 7, 2014  
Subject: RV Park Code Update – Public Hearing  
Ordinance 1681

**FROM: Cathy Rosen, Public Works Director**

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

**PURPOSE**

City Parks staff recommends adoption of Ordinance 1681 revising Chapter 6.13, sections 6.13.090 and 6.13.100, of the Oak Harbor Municipal Code dealing with recreational camping fees in City parks.

**SUMMARY STATEMENT**

The City of Oak Harbor Parks Division has installed a new automated pay station at StaySail RV Park that will allow campers to pay with debit or credit cards that have the Visa, MasterCard or Discover logos on them, either on line through a reservation system or at the kiosk located in the park. Not all sites will be available by reservation and will remain available on a “first come first served” basis. Payment can also be made at City Hall during normal business hours.

Currently the City charges \$20.00 per night for a full hookup site, \$12.00 per night for a non-hookup (tent) site and \$3.00 to use the dump station. Fees for overnight camping and the use of the dump station have not been raised since 2002. Staff has conducted a comparison of other local RV parks rates, as well as dump station fees, and found that the City of Oak Harbor charges the lowest rates in the area.

Revisions to sections 6.13.090 and 6.13.100 will authorize the City to increase camping fees to \$25.00 per night for full hookup sites, \$15.00 per night for non-hookup sites and \$5.00 to use the dump station. It is also our intention to assess a \$6.50 on line reservation fee and an \$8.50 reservation cancellation fee. The payment due (check in) time will also be changed from 5:00 p.m. to 2:30 p.m. for campers with reservations and check out time will be 12:00 p.m. Campers without reservations would be required to check in within 30 minutes of arrival at the RV Park.

City residents have been allowed to use the dump station at no cost. Revisions to Section 6.13.100 will require all users of the dump station to pay the \$5.00 fee.

**RECOMMENDED ACTION**

1. Hold a Public Hearing; and
2. Adopt Ordinance 1681 relating to Recreational Camping in City Parks

**ATTACHMENTS**

- Local RV Parks Rate Comparison & RV Dump Station Fee Comparison
- Draft Ordinance 1681

**LOCAL RV PARKS  
RATE COMPARISON**

<b>Park</b>	<b>City</b>	<b>Cost</b>
Deception Pass State Park	Oak Harbor	\$32-37
Fidalgo Bay Resort	Anacortes	\$34-62
Mount Vernon RV Park	Mount Vernon	\$34
North Whidbey RV Park	Oak Harbor	\$32.61
Pioneer Trails	Anacortes	\$34-49
Swinomish Casino	Anacortes	\$32-35
Washington Park	Anacortes	\$25 *
	* non-resident fee (water & power only)	
Windjammer Park	Oak Harbor	\$20

*NOTE: Most RV Parks charge a \$6.50 Reservation Fee*

\*\*\*\*\*

**RV DUMP STATION  
FEE COMPARISON**

<b>Park</b>	<b>City</b>	<b>Cost</b>
Cathlamet Park	Cathlamet	\$5
Deception Pass State Park	Oak Harbor	\$5
Gold Bar Park	Gold Bar	\$10
Kennewick Tesoro Park	Kennewick	\$6
Lake Sammamish Park	Bellevue	\$10
Lincoln Rock State Park	East Wenatchee	\$5
Lions Park	Mount Vernon	\$1
Silver Lake County Park	Bellingham	\$5
Sumas RV Park	Sumas	\$5
Washougal Park	Washougal	\$5
Windjammer Park	Oak Harbor	\$3

*NOTE: All State Parks RV dump station fees are \$5.00 per use  
Low cost or free RV dump stations are located at the City's wastewater treatment plants*

**ORDINANCE NO. 1681**

**AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON  
RELATING TO RECREATIONAL CAMPING IN CITY PARKS AND  
AMENDING SECTIONS 6.13.010, 6.13.020, 6.13.025, 6.13.090 AND 6.13.100  
OF THE OAK HARBOR MUNICIPAL CODE**

WHEREAS, The City desires to update the Oak Harbor Municipal Code with updated locations, fees and minor housekeeping amendments; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. OHMC Chapter 6.13 entitled RECREATIONAL CAMPING IN CITY PARKS is hereby amended to read as follows:

Sections:

- 6.13.010 Definitions.
- 6.13.020 Camping.
- 6.13.025 Tent Camping.
- 6.13.030 Peace and quiet.
- 6.13.040 Rubbish.
- 6.13.050 Sanitation.
- 6.13.060 Expulsion from city park camping areas.
- 6.13.070 Towing of vehicles and removal of other property.
- 6.13.080 Termination of camping privileges.
- 6.13.090 Fee for overnight use required.
- 6.13.100 Other fees for camping.
- 6.13.110 Penalties.

**6.13.010 Definitions.**

Whenever used in this chapter the following terms shall be defined as herein indicated:

- (1) "Administrator" shall mean the public works ~~superintendent~~ director or a designee of the administrator.
- (2) "Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.
- (3) "Camping party" shall mean an individual or a group of people (two or more persons) that is organized, equipped and capable of sustaining its own camping activity. A "camping party" is a "camping unit" for purposes of RCW 79A.05.065.
- (4) "~~City Beach Staysail~~ RV Park" shall mean that area in ~~City Beach Windjammer~~ Park designated and improved for overnight camping and overflow camping areas designated by council and so signed by the administrator.
- (5) "Day area parking space" shall mean any designated parking space within any park area designated for daytime vehicle parking.
- (6) "Extra vehicle" shall mean each additional unhitched vehicle in excess of the one recreation vehicle that will be parked in a designated campsite or parking area for overnight.
- (7) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

- (8) "OHMC" means Oak Harbor Municipal Code.
- (9) "Overflow area" shall mean an area in a city park separate from designated overnight and special event camping areas, designated by the administrator, for camping to accommodate peak camping demands in the city.
- (10) "Overnight accommodations" shall mean camping areas designated by the city and shall include ~~City Beach Staysail~~ RV Park.
- (11) "Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.
- (12) "Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.
- (13) "Residence" shall mean the long-term habitation of facilities at a given city park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:  
 Camping at ~~City Beach Staysail~~ RV Park for more than 30 days between April 1<sup>st</sup> through September 30<sup>th</sup>; or 60 days between October 1<sup>st</sup> through ~~and~~ March 31<sup>st</sup>. The time period shall begin on the date for which the first night's fee is paid.
- (14) "Special Event camping" is an area in a city park separate from the designated overnight camping area, which may be used for camping for special events which are authorized by the city council for sporting or recreational events such as a soccer tournament or Marina race week.
- (15) "Standard campsite" shall mean a designated campsite which is served by nearby domestic water, sink waste, garbage disposal, and flush comfort station.
- (16) "Trailer dump station" shall mean any city park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle. (Ord 1681, Sec. 1, 2014; Ord. 1411 § 4, 2005; Ord. 1303 § 2, 2002; Ord. 1108 § 1, 1997; Ord. 975 § 1, 1994; Ord. 770 § 1, 1987; Ord. 667 § 1, 1984; Ord. 582 § 1, 1981; Ord. 541 § 1, 1979).

### **6.13.020 Camping.**

- (1) Camping areas of the city are designed and administered specifically to provide recreational opportunities. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.
- (2) No person or camping party may use any city park facility for residence purposes, as defined.
- (3) No person shall designate a park camping area as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.
- (4) No person shall camp in any city park area except in areas specifically designated by the city and marked for that purpose as directed by the administrator.
- (5) Occupants shall vacate camping facilities by removing their personal property therefrom no later than ~~4:00~~ 12:00 p.m., if the applicable camping fees have not been paid or if the time limit for occupancy of the campsite has expired. Remaining in a campsite beyond the established checkout time shall subject the occupant to the payment of an additional camping fee.
- (6) Use of campsites by tent campers shall be subject to payment of the fee for such campsite.
- (7) A person may not occupy a campsite in a city park when he or she owes money to the city for unpaid camp fees.
- (8) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fees within the applicable time limits. No person shall

take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a city employee that such campsite is occupied, or signage is posted by the city directing that the site not be occupied.

- (9) In order to afford the general public the greatest possible use of the city park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. No person or party may stay more than 30 nights in the RV park in any 90-day period.
- (10) A maximum of eight people shall be permitted at a campsite, unless otherwise authorized by the administrator. The number of vehicles occupying a campsite shall be limited to one car and one recreational vehicle; provided, that one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of the administrator the constructed facilities so warrant.
- (11) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site; provided, no more than three motorcycles may occupy a campsite.
- (12) No more than two tents may be used in any campsite.
- (13) Special event camping areas may be authorized at the administrator's discretion only when all designated campsites are full. Persons using special event camping areas must pay the applicable campsite fee and must vacate the campsite when directed by the administrator.
- (14) Designated overflow camping areas may be used when all regularly designated campsites in the park are full. Persons using overflow camping areas must pay the applicable campsite fee.
- (15) No vehicle or trailer may be parked in or occupy a campsite which is not currently licensed to be driven on the roads of Washington State. Temporary licenses are not in compliance with this provision. No inoperable vehicle may be parked at or occupy a campsite. (Ord. 1411 § 5, 2005; Ord. 1303 § 3, 2002; Ord. 980 § 2, 1994; Ord. 541 § 2, 1979. ~~(Ord. 1681 Sec 2, 2014)~~)

#### **6.13.025 Tent camping.**

- (1) The administrator shall designate a portion of City Beach Staysail RV Park for at least five tent camping locations which may be used exclusively for tent camping.
- (2) Tent camping shall be for no more than 10 days in any 90-day period of time.
- (3) Persons engaged in tent camping shall follow other rules set out for camping in this chapter and other rules governing conduct in city parks. (Ord. 1411 § 6, 2005.)~~(Ord 1681 Sec 3, 2014)~~

#### **6.13.030 Peace and quiet.**

To ensure peace and quiet for visitors:

- (1) No person using camping areas of the city park shall violate the provisions of the OHMC, this chapter or other chapters of this title.
- (2) No person shall engage in conduct which disturbs other camping park users in their sleeping quarters or in campgrounds between the quiet hours of 10:00 p.m. and 6:30 a.m.
- (3) No person shall, at any time, use sound-emitting electronic equipment including electrical speakers, radios, phonographs, televisions, musical instruments or other such equipment, at a volume which emits sound beyond the immediate individual camp or picnic site that may disturb other park users without specific permission of the administrator.
- (4) Engine driven electric generators may be operated only between the hours of 8:00 a.m. and 9:00 p.m. (Ord. 1411 § 7, 2005; Ord. 1303 § 4, 2002; Ord. 1108 § 2, 1997.)

#### **6.13.040 Rubbish.**

- (1) No person shall leave, deposit, drop, or scatter bottles, broken glass, ashes, waste paper, cans, or other rubbish in a city camping area, except in a garbage can or other receptacle designated for such purposes.
- (2) No person shall deposit any household or commercial garbage, refuse, waste, or rubbish, which is brought as such from any private property, in any recreational camping area garbage can or other receptacle designed for such purpose. [\(Ord. 1303 § 5, 2002\).](#)

#### **6.13.050 Sanitation.**

No person shall, in any city park area:

- (1) Drain or dump refuse or waste from any trailer, camper, automobile, or other vehicle, except in designated disposal areas or receptacles.
- (2) Clean fish or other food, or wash any clothing or other article for personal or household use, or any dog or other animal, except at designated areas.
- (3) Clean or wash any automobile or other vehicle except in areas specifically for that use.
- (4) Pollute, or in any way contaminate by dumping or otherwise depositing therein, any waste or refuse of any nature, kind, or description, including human or animal bodily waste, in any city stream, river, lake, or other body of water running in, through, or adjacent to any city park area. [\(Ord. 1303 § 6, 2002\).](#)

#### **6.13.060 Expulsion from city park camping areas.**

- (1) In addition to the penalty provided by this chapter, the laws of the state of Washington or city ordinance, failure to comply with any section of this chapter, or of any other chapter of this title shall subject the person so failing to comply with expulsion from its city park in which the camping area is located for the following time period:
  - (a) One incident shall result in a 30-day expulsion.
  - (b) Two incidents within any three year time period shall result in a 90-day suspension.
  - (c) Three incidents within any three year period shall result in a one-year expulsion.
- (2) When a person is expelled for failure to pay camping fees, the expulsion shall be limited to the camping area of the city park and the person expelled may not use or occupy a camping space until the term of expulsion is completed or the fees are paid, whichever event comes last.
- (3) A person violating the restriction of an expulsion order is guilty of a misdemeanor, punishable as set out in OHMC 6.13.110.

The administrator may reduce the time a person is expelled from the parks for good cause. [\(Ord. 1411 § 8, 2005; Ord. 1303 § 7, 2002\).](#)

#### **6.13.070 Towing of vehicles and removal of other property.**

- (1) When fees required are not paid or persons' or camping parties' camping privileges are terminated under OHMC 6.13.080 or persons are expelled under OHMC 6.12.050 or 6.13.060, vehicles or other property or both may be towed or otherwise removed at owner's expense.
- (2) Any vehicle parked in a camping area in violation of the provisions of this chapter may be towed at owner's expense. Signage in the parks shall warn of the possibility of property being removed and vehicles towed at owner's expense.
- (3) When a vehicle is towed or other property has to be removed, that vehicle may not occupy a campsite without payment of fees required under this chapter or 90 days, whichever event comes last. [\(Ord. 1411 § 9, 2005; Ord. 1303 § 8, 2002\).](#)

### **6.13.080 Termination of camping privileges.**

- (1) The administrator or the chief of police or designee of either the administrator or the chief of police may terminate the camping privileges of any person or party of campers when any person in the camping party has violated the provision of this chapter or any other chapter of this title.
- (2) Occupancy of any camping site in a city park after the time of termination is unlawful and is a gross misdemeanor and punishable by a fine of up to \$5,000 or jail sentence of up to one year or both such fine and jail time.
- (3) Upon receiving notice of termination, the person or persons whose camping privileges have been terminated shall leave the camping area or areas of the city and remove all personal property and vehicles from the camping area prior to the time of termination.
- (4) Notice of termination shall be in writing and, unless an emergency exists, shall provide the person or persons whose camping privileges have been terminated a minimum of four hours to remove their property or vehicles.
- (5) Prior to or after the time for termination, the person or party whose camping privileges have been terminated may request an informal meeting with the administrator or his/her designee to review whether the termination notice should be adhered to.

A person or party of campers whose camping privileges have been terminated may not use camping facilities or camp in camping areas for a minimum of 90 days after the date of termination.

Whenever a person or party of campers whose camping privileges have been terminated by reason of failing to pay camping fees or by reason of late payment of camping fees, that person or party may not use city camping facilities or camp in city camping areas for a minimum of 90 days or until the unpaid fees are paid whichever event comes last. [\(Ord. 1411 § 10, 2005\)](#).

### **Section 6.13.090 Fee for overnight use required.**

- (1) A charge of ~~\$20.00-\$25.00~~ per night shall be paid for each recreation vehicle parked in the Staysail RV park area located at City Beach Windjammer Park.
  - (2) A charge of ~~\$12.00~~\$15.00 per night shall be paid for use of each overflow campsite, tent campsite or special event campsite.
  - (3) Payment shall be made ~~to the attendant when requested, and in any event prior to 5:00 p.m., each day~~ either online or at the kiosk located at Staysail RV Park within 30 minutes of arrival. Payment can also be made at City Hall during regular business hours. Campers with reservations may check in after 2:30 p.m. Campers without reservations shall make payment at the kiosk within 30 minutes of arrival at the RV Park. Check out time shall be 12:00 p.m.
  - (4) A fee of \$6.50 will be assessed for online reservations.
  - (5) A fee of \$8.50 shall be assessed for the cancellation of online reservations.
- [\(Ord. 1411 § 11, 2005; Ord. 1303 § 9, 2002\). \(Ord. 1681 Sec., 2014\)](#)

### **Section 6.13.100 Other fees for camping.**

- (1) Administrator may designate overflow areas for camping and provide regulation for use of such overflow area.
- (2) ~~Other services provided in the park shall be charged for at rates specified by the administrator.~~ A charge of \$5.00 shall be paid for each use of the trailer dump station at Staysail RV Park. Such service rates schedules shall be posted at the camping area, filed with the city clerk and available for public inspection.

~~(3) For persons staying over, payment shall be before 5:00 p.m. or the site shall be vacated. (Ord. 1303 § 10, 2002; Ord. 1166 § 2, 1999; Ord. 1073 §§ 1, 2, 1996; Ord. 980 § 1, 1994. Formerly 6.13.015).~~

### **6.13.110 Penalties.**

- (1) Any person failing to pay camping fees under this chapter shall be guilty of a misdemeanor punishable by a fine not to exceed \$1,000 or a jail sentence of 90 days in jail or both such fine and jail time. Each day of violation shall be a separate offense.
- (2) Any intentional violation of this chapter is a misdemeanor (punishable by a fine not to exceed \$1,000 or a jail sentence of 90 days in jail or both such fine and jail time. Each day of violation shall be a separate offense.
- (3) Any other violation of provisions in this chapter shall be a Class A infraction as defined by the Oak Harbor Municipal Code and shall be subject to a penalty of up to \$250. Each day of continuing violation shall be a separate infraction. (Ord. 1411 § 12, 2005; Ord. 1303 § 11, 2002). ~~(Ord. 1681 Sec. 5, 2014)~~

### **Section 26. Severability.**

~~If any part, provision or section of this Chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect. If any section, clause, and/or phrase of this Ordinance is held invalid by a court of competent jurisdiction, such invalidity and/or unconstitutionality shall not affect the validity and/or constitutionality of any other section, clause, and/or phrase of the Ordinance.~~

**Section 37.** This ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law.

PASSED by the City Council this 7<sup>th</sup> day of January 2014.

CITY OF OAK HARBOR

Attest:

\_\_\_\_\_  
Scott Dudley, Mayor

\_\_\_\_\_  
~~Valerie J. Loffler~~ Anna Thompson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Grant K. Weed, Interim City Attorney

Published: January 11, 2014

**City of Oak Harbor  
City Council Agenda Bill**

Bill No. 7.d.  
Date: January 7, 2014  
Subject: RV Park Code Update – Public Hearing  
Ordinance 1681

**FROM: Cathy Rosen, Public Works Director**

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

\_\_\_\_\_ Scott Dudley, Mayor  
\_\_\_\_\_ Larry Cort, City Administrator  
\_\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

City Parks staff recommends adoption of Ordinance 1681 revising Chapter 6.13, sections 6.13.090 and 6.13.100, of the Oak Harbor Municipal Code dealing with recreational camping fees in City parks.

**SUMMARY STATEMENT**

The City of Oak Harbor Parks Division has installed a new automated pay station at StaySail RV Park that will allow campers to pay with debit or credit cards that have the Visa, MasterCard or Discover logos on them, either on line through a reservation system or at the kiosk located in the park. Not all sites will be available by reservation and will remain available on a “first come first served” basis. Payment can also be made at City Hall during normal business hours.

Currently the City charges \$20.00 per night for a full hookup site, \$12.00 per night for a non-hookup (tent) site and \$3.00 to use the dump station. Fees for overnight camping and the use of the dump station have not been raised since 2002. Staff has conducted a comparison of other local RV parks rates, as well as dump station fees, and found that the City of Oak Harbor charges the lowest rates in the area.

Revisions to sections 6.13.090 and 6.13.100 will authorize the City to increase camping fees to \$25.00 per night for full hookup sites, \$15.00 per night for non-hookup sites and \$5.00 to use the dump station. It is also our intention to assess a \$6.50 on line reservation fee and an \$8.50 reservation cancellation fee. The payment due (check in) time will also be changed from 5:00 p.m. to 2:30 p.m. for campers with reservations and check out time will be 12:00 p.m. Campers without reservations would be required to check in within 30 minutes of arrival at the RV Park.

City residents have been allowed to use the dump station at no cost. Revisions to Section 6.13.100 will require all users of the dump station to pay the \$5.00 fee.

**RECOMMENDED ACTION**

1. Hold a Public Hearing; and
2. Adopt Ordinance 1681 relating to Recreational Camping in City Parks

**ATTACHMENTS**

- Local RV Parks Rate Comparison & RV Dump Station Fee Comparison
- Draft Ordinance 1681

**LOCAL RV PARKS  
RATE COMPARISON**

<b>Park</b>	<b>City</b>	<b>Cost</b>
Deception Pass State Park	Oak Harbor	\$32-37
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North Whidbey RV Park	Oak Harbor	\$32.61
Pioneer Trails	Anacortes	\$34-49
Swinomish Casino	Anacortes	\$32-35
Washington Park	Anacortes	\$25 *
	* non-resident fee (water & power only)	
Windjammer Park	Oak Harbor	\$20

*NOTE: Most RV Parks charge a \$6.50 Reservation Fee*

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**RV DUMP STATION  
FEE COMPARISON**

<b>Park</b>	<b>City</b>	<b>Cost</b>
Cathlamet Park	Cathlamet	\$5
Deception Pass State Park	Oak Harbor	\$5
Gold Bar Park	Gold Bar	\$10
Kennewick Tesoro Park	Kennewick	\$6
Lake Sammamish Park	Bellevue	\$10
Lincoln Rock State Park	East Wenatchee	\$5
Lions Park	Mount Vernon	\$1
Silver Lake County Park	Bellingham	\$5
Sumas RV Park	Sumas	\$5
Washougal Park	Washougal	\$5
Windjammer Park	Oak Harbor	\$3

*NOTE: All State Parks RV dump station fees are \$5.00 per use  
Low cost or free RV dump stations are located at the City's wastewater treatment plants*

**City of Oak Harbor  
City Council Agenda Bill**

**Bill No.** 9.a.  
**Date:** January 7, 2014  
**Subject:** Council Workshop Meeting  
Dates for 2014

  
**FROM:** Larry E. Cort, City Administrator

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

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**PURPOSE**

The purpose of this agenda bill is to set City Council regular workshop meeting dates for 2014.

**SUMMARY STATEMENT**

On December 17, 2013, the City Council repealed the code section regarding standing committee meetings in favor of once per month regular workshops of the full Council. This decision does not preclude the possibility of scheduling additional workshops as the need arises but instead sets a regular meeting time for the Council to gather to hear department briefs, review upcoming agenda items and discuss emerging issues.

In making this decision, the Council requested feedback from the staff regarding its preference for meeting days and times. After discussing this question at our December 23 department head meeting, we are in agreement that the fourth Wednesday of each month beginning at 3:00 continues to be a workable choice. For November and December, the staff might suggest the third Wednesday at 3:00 to avoid conflicts with Thanksgiving and Christmas.

The recommended action is to set the City Council regular workshop dates for 2014 as detailed in the suggested motion.

**RECOMMENDED ACTION**

Motion to set City Council 2014 workshop meetings starting at 3:00 pm on the following dates: January 22, February 26, March 26, April 23, May 28, June 25, July 23, August 27, September 24, October 22, November 19 and December 17.

**ATTACHMENTS**

City of Oak Harbor  
City Council Agenda Bill

Bill No. 7.d.  
Date: January 7, 2014  
Subject: RV Park Code Update – Public Hearing  
Ordinance 1681

**FROM: Cathy Rosen, Public Works Director**

**INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:**

 Scott Dudley, Mayor  
 Larry Cort, City Administrator  
\_\_\_\_ Doug Merriman, Finance Director  
\_\_\_\_ Grant Weed, Interim City Attorney, as to form

**PURPOSE**

City Parks staff recommends adoption of Ordinance 1681 revising Chapter 6.13, sections 6.13.090 and 6.13.100, of the Oak Harbor Municipal Code dealing with recreational camping fees in City parks.

**SUMMARY STATEMENT**

The City of Oak Harbor Parks Division has installed a new automated pay station at StaySail RV Park that will allow campers to pay with debit or credit cards that have the Visa, MasterCard or Discover logos on them, either on line through a reservation system or at the kiosk located in the park. Not all sites will be available by reservation and will remain available on a “first come first served” basis. Payment can also be made at City Hall during normal business hours.

Currently the City charges \$20.00 per night for a full hookup site, \$12.00 per night for a non-hookup (tent) site and \$3.00 to use the dump station. Fees for overnight camping and the use of the dump station have not been raised since 2002. Staff has conducted a comparison of other local RV parks rates, as well as dump station fees, and found that the City of Oak Harbor charges the lowest rates in the area.

Revisions to sections 6.13.090 and 6.13.100 will authorize the City to increase camping fees to \$25.00 per night for full hookup sites, \$15.00 per night for non-hookup sites and \$5.00 to use the dump station. It is also our intention to assess a \$6.50 on line reservation fee and an \$8.50 reservation cancellation fee. The payment due (check in) time will also be changed from 5:00 p.m. to 2:30 p.m. for campers with reservations and check out time will be 12:00 p.m. Campers without reservations would be required to check in within 30 minutes of arrival at the RV Park.

City residents have been allowed to use the dump station at no cost. Revisions to Section 6.13.100 will require all users of the dump station to pay the \$5.00 fee.

**RECOMMENDED ACTION**

1. Hold a Public Hearing; and
2. Adopt Ordinance 1681 relating to Recreational Camping in City Parks

**ATTACHMENTS**

- Local RV Parks Rate Comparison & RV Dump Station Fee Comparison
- Draft Ordinance 1681

**ORDINANCE NO. 1681**

**AN ORDINANCE OF THE CITY OF OAK HARBOR, WASHINGTON  
RELATING TO RECREATIONAL CAMPING IN CITY PARKS AND  
AMENDING SECTIONS 6.13.010, 6.13.020, 6.13.025, 6.13.090 AND 6.13.100  
OF THE OAK HARBOR MUNICIPAL CODE**

WHEREAS, The City desires to update the Oak Harbor Municipal Code with updated locations, fees and minor housekeeping amendments; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. OHMC Chapter 6.13 entitled RECREATIONAL CAMPING IN CITY PARKS is hereby amended to read as follows:

Sections:

- 6.13.010 Definitions.
- 6.13.020 Camping.
- 6.13.025 Tent Camping.
- 6.13.030 Peace and quiet.
- 6.13.040 Rubbish.
- 6.13.050 Sanitation.
- 6.13.060 Expulsion from city park camping areas.
- 6.13.070 Towing of vehicles and removal of other property.
- 6.13.080 Termination of camping privileges.
- 6.13.090 Fee for overnight use required.
- 6.13.100 Other fees for camping.
- 6.13.110 Penalties.

**6.13.010 Definitions.**

Whenever used in this chapter the following terms shall be defined as herein indicated:

- (1) "Administrator" shall mean the public works ~~superintendent~~ director or a designee of the administrator.
- (2) "Camping" shall mean erecting a tent or shelter or arranging bedding, or both, or parking a recreation vehicle or other vehicle for the purpose of remaining overnight.
- (3) "Camping party" shall mean an individual or a group of people (two or more persons) that is organized, equipped and capable of sustaining its own camping activity. A "camping party" is a "camping unit" for purposes of RCW 79A.05.065.
- (4) "~~City Beach Staysail~~ RV Park" shall mean that area in ~~City Beach Windjammer~~ Park designated and improved for overnight camping and overflow camping areas designated by council and so signed by the administrator.
- (5) "Day area parking space" shall mean any designated parking space within any park area designated for daytime vehicle parking.
- (6) "Extra vehicle" shall mean each additional unhitched vehicle in excess of the one recreation vehicle that will be parked in a designated campsite or parking area for overnight.
- (7) "Motorcycle" means every motor vehicle having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a farm tractor and a moped.

- (8) "OHMC" means Oak Harbor Municipal Code.
- (9) "Overflow area" shall mean an area in a city park separate from designated overnight and special event camping areas, designated by the administrator, for camping to accommodate peak camping demands in the city.
- (10) "Overnight accommodations" shall mean camping areas designated by the city and shall include ~~City Beach Staysail~~ RV Park.
- (11) "Person" shall mean all natural persons, firms, partnerships, corporations, clubs, and all associations or combinations of persons whenever acting for themselves or by an agent, servant, or employee.
- (12) "Recreation vehicle" shall mean a vehicle/trailer unit, van, pickup truck with camper, motor home, converted bus, or any similar type vehicle which contains sleeping and/or housekeeping accommodations.
- (13) "Residence" shall mean the long-term habitation of facilities at a given city park for purposes whose primary character is not recreational. "Residence" is characterized by one or both of the following patterns:  
 Camping at ~~City Beach Staysail~~ RV Park for more than 30 days between April 1<sup>st</sup> through September 30<sup>th</sup>; or 60 days between October 1<sup>st</sup> through ~~and~~ March 31<sup>st</sup>. The time period shall begin on the date for which the first night's fee is paid.
- (14) "Special Event camping" is an area in a city park separate from the designated overnight camping area, which may be used for camping for special events which are authorized by the city council for sporting or recreational events such as a soccer tournament or Marina race week.
- (15) "Standard campsite" shall mean a designated campsite which is served by nearby domestic water, sink waste, garbage disposal, and flush comfort station.
- (16) "Trailer dump station" shall mean any city park sewage disposal facility designated for the disposal of sewage waste from any recreation vehicle. (Ord 1681, Sec. 1, 2014; Ord. 1411 § 4, 2005; Ord. 1303 § 2, 2002; Ord. 1108 § 1, 1997; Ord. 975 § 1, 1994; Ord. 770 § 1, 1987; Ord. 667 § 1, 1984; Ord. 582 § 1, 1981; Ord. 541 § 1, 1979).

### **6.13.020 Camping.**

- (1) Camping areas of the city are designed and administered specifically to provide recreational opportunities. Use of park facilities for purposes which are of a nonrecreational nature, such as long-term residency at park facilities, obstructs opportunities for recreational use, and is inconsistent with the purposes for which those facilities were designed.
- (2) No person or camping party may use any city park facility for residence purposes, as defined.
- (3) No person shall designate a park camping area as a permanent or temporary address on official documents or applications submitted to public or private agencies or institutions.
- (4) No person shall camp in any city park area except in areas specifically designated by the city and marked for that purpose as directed by the administrator.
- (5) Occupants shall vacate camping facilities by removing their personal property therefrom no later than ~~4:00~~ 12:00 p.m., if the applicable camping fees have not been paid or if the time limit for occupancy of the campsite has expired. Remaining in a campsite beyond the established checkout time shall subject the occupant to the payment of an additional camping fee.
- (6) Use of campsites by tent campers shall be subject to payment of the fee for such campsite.
- (7) A person may not occupy a campsite in a city park when he or she owes money to the city for unpaid camp fees.
- (8) A campsite is considered occupied when it is being used for purposes of camping by a person or persons who have paid the camping fees within the applicable time limits. No person shall

take or attempt to take possession of a campsite when it is being occupied by another party, or when informed by a city employee that such campsite is occupied, or signage is posted by the city directing that the site not be occupied.

- (9) In order to afford the general public the greatest possible use of the city park system, on a fair and equal basis, and to prevent residential use, continuous occupancy of facilities by the same camping party shall be limited. No person or party may stay more than 30 nights in the RV park in any 90-day period.
- (10) A maximum of eight people shall be permitted at a campsite, unless otherwise authorized by the administrator. The number of vehicles occupying a campsite shall be limited to one car and one recreational vehicle; provided, that one additional vehicle without built-in sleeping accommodations may occupy a designated campsite when in the judgment of the administrator the constructed facilities so warrant.
- (11) Persons traveling by bicycles, motor bikes or other similar modes of transportation and utilizing campsites shall be limited to eight persons per site; provided, no more than three motorcycles may occupy a campsite.
- (12) No more than two tents may be used in any campsite.
- (13) Special event camping areas may be authorized at the administrator's discretion only when all designated campsites are full. Persons using special event camping areas must pay the applicable campsite fee and must vacate the campsite when directed by the administrator.
- (14) Designated overflow camping areas may be used when all regularly designated campsites in the park are full. Persons using overflow camping areas must pay the applicable campsite fee.
- (15) No vehicle or trailer may be parked in or occupy a campsite which is not currently licensed to be driven on the roads of Washington State. Temporary licenses are not in compliance with this provision. No inoperable vehicle may be parked at or occupy a campsite. (Ord. 1411 § 5, 2005; Ord. 1303 § 3, 2002; Ord. 980 § 2, 1994; Ord. 541 § 2, 1979. ~~(Ord. 1681 Sec 2, 2014)~~)

#### **6.13.025 Tent camping.**

- (1) The administrator shall designate a portion of City Beach Staysail RV Park for at least five tent camping locations which may be used exclusively for tent camping.
- (2) Tent camping shall be for no more than 10 days in any 90-day period of time.
- (3) Persons engaged in tent camping shall follow other rules set out for camping in this chapter and other rules governing conduct in city parks. (Ord. 1411 § 6, 2005.)~~(Ord 1681 Sec 3, 2014)~~

#### **6.13.030 Peace and quiet.**

To ensure peace and quiet for visitors:

- (1) No person using camping areas of the city park shall violate the provisions of the OHMC, this chapter or other chapters of this title.
- (2) No person shall engage in conduct which disturbs other camping park users in their sleeping quarters or in campgrounds between the quiet hours of 10:00 p.m. and 6:30 a.m.
- (3) No person shall, at any time, use sound-emitting electronic equipment including electrical speakers, radios, phonographs, televisions, musical instruments or other such equipment, at a volume which emits sound beyond the immediate individual camp or picnic site that may disturb other park users without specific permission of the administrator.
- (4) Engine driven electric generators may be operated only between the hours of 8:00 a.m. and 9:00 p.m. (Ord. 1411 § 7, 2005; Ord. 1303 § 4, 2002; Ord. 1108 § 2, 1997.)

#### **6.13.040 Rubbish.**

- (1) No person shall leave, deposit, drop, or scatter bottles, broken glass, ashes, waste paper, cans, or other rubbish in a city camping area, except in a garbage can or other receptacle designated for such purposes.
- (2) No person shall deposit any household or commercial garbage, refuse, waste, or rubbish, which is brought as such from any private property, in any recreational camping area garbage can or other receptacle designed for such purpose. [\(Ord. 1303 § 5, 2002\).](#)

#### **6.13.050 Sanitation.**

No person shall, in any city park area:

- (1) Drain or dump refuse or waste from any trailer, camper, automobile, or other vehicle, except in designated disposal areas or receptacles.
- (2) Clean fish or other food, or wash any clothing or other article for personal or household use, or any dog or other animal, except at designated areas.
- (3) Clean or wash any automobile or other vehicle except in areas specifically for that use.
- (4) Pollute, or in any way contaminate by dumping or otherwise depositing therein, any waste or refuse of any nature, kind, or description, including human or animal bodily waste, in any city stream, river, lake, or other body of water running in, through, or adjacent to any city park area. [\(Ord. 1303 § 6, 2002\).](#)

#### **6.13.060 Expulsion from city park camping areas.**

- (1) In addition to the penalty provided by this chapter, the laws of the state of Washington or city ordinance, failure to comply with any section of this chapter, or of any other chapter of this title shall subject the person so failing to comply with expulsion from its city park in which the camping area is located for the following time period:
  - (a) One incident shall result in a 30-day expulsion.
  - (b) Two incidents within any three year time period shall result in a 90-day suspension.
  - (c) Three incidents within any three year period shall result in a one-year expulsion.
- (2) When a person is expelled for failure to pay camping fees, the expulsion shall be limited to the camping area of the city park and the person expelled may not use or occupy a camping space until the term of expulsion is completed or the fees are paid, whichever event comes last.
- (3) A person violating the restriction of an expulsion order is guilty of a misdemeanor, punishable as set out in OHMC 6.13.110.

The administrator may reduce the time a person is expelled from the parks for good cause. [\(Ord. 1411 § 8, 2005; Ord. 1303 § 7, 2002\).](#)

#### **6.13.070 Towing of vehicles and removal of other property.**

- (1) When fees required are not paid or persons' or camping parties' camping privileges are terminated under OHMC 6.13.080 or persons are expelled under OHMC 6.12.050 or 6.13.060, vehicles or other property or both may be towed or otherwise removed at owner's expense.
- (2) Any vehicle parked in a camping area in violation of the provisions of this chapter may be towed at owner's expense. Signage in the parks shall warn of the possibility of property being removed and vehicles towed at owner's expense.
- (3) When a vehicle is towed or other property has to be removed, that vehicle may not occupy a campsite without payment of fees required under this chapter or 90 days, whichever event comes last. [\(Ord. 1411 § 9, 2005; Ord. 1303 § 8, 2002\).](#)

### **6.13.080 Termination of camping privileges.**

- (1) The administrator or the chief of police or designee of either the administrator or the chief of police may terminate the camping privileges of any person or party of campers when any person in the camping party has violated the provision of this chapter or any other chapter of this title.
- (2) Occupancy of any camping site in a city park after the time of termination is unlawful and is a gross misdemeanor and punishable by a fine of up to \$5,000 or jail sentence of up to one year or both such fine and jail time.
- (3) Upon receiving notice of termination, the person or persons whose camping privileges have been terminated shall leave the camping area or areas of the city and remove all personal property and vehicles from the camping area prior to the time of termination.
- (4) Notice of termination shall be in writing and, unless an emergency exists, shall provide the person or persons whose camping privileges have been terminated a minimum of four hours to remove their property or vehicles.
- (5) Prior to or after the time for termination, the person or party whose camping privileges have been terminated may request an informal meeting with the administrator or his/her designee to review whether the termination notice should be adhered to.

A person or party of campers whose camping privileges have been terminated may not use camping facilities or camp in camping areas for a minimum of 90 days after the date of termination.

Whenever a person or party of campers whose camping privileges have been terminated by reason of failing to pay camping fees or by reason of late payment of camping fees, that person or party may not use city camping facilities or camp in city camping areas for a minimum of 90 days or until the unpaid fees are paid whichever event comes last. [\(Ord. 1411 § 10, 2005\)](#).

### **Section 6.13.090 Fee for overnight use required.**

- (1) A charge of ~~\$20.00-\$25.00~~ per night shall be paid for each recreation vehicle parked in the Staysail RV park area located at City Beach Windjammer Park.
  - (2) A charge of ~~\$12.00~~\$15.00 per night shall be paid for use of each overflow campsite, tent campsite or special event campsite.
  - (3) Payment shall be made ~~to the attendant when requested, and in any event prior to 5:00 p.m., each day~~ either online or at the kiosk located at Staysail RV Park within 30 minutes of arrival. Payment can also be made at City Hall during regular business hours. Campers with reservations may check in after 2:30 p.m. Campers without reservations shall make payment at the kiosk within 30 minutes of arrival at the RV Park. Check out time shall be 12:00 p.m.
  - (4) A fee of \$6.50 will be assessed for online reservations.
  - (5) A fee of \$8.50 shall be assessed for the cancellation of online reservations.
- [\(Ord. 1411 § 11, 2005; Ord. 1303 § 9, 2002\). \(Ord. 1681 Sec., 2014\)](#)

### **Section 6.13.100 Other fees for camping.**

- (1) Administrator may designate overflow areas for camping and provide regulation for use of such overflow area.
- (2) ~~Other services provided in the park shall be charged for at rates specified by the administrator.~~ A charge of \$5.00 shall be paid for each use of the trailer dump station at Staysail RV Park. Such service rates schedules shall be posted at the camping area, filed with the city clerk and available for public inspection.

~~(3) For persons staying over, payment shall be before 5:00 p.m. or the site shall be vacated. (Ord. 1303 § 10, 2002; Ord. 1166 § 2, 1999; Ord. 1073 §§ 1, 2, 1996; Ord. 980 § 1, 1994. Formerly 6.13.015).~~

### **6.13.110 Penalties.**

- (1) Any person failing to pay camping fees under this chapter shall be guilty of a misdemeanor punishable by a fine not to exceed \$1,000 or a jail sentence of 90 days in jail or both such fine and jail time. Each day of violation shall be a separate offense.
- (2) Any intentional violation of this chapter is a misdemeanor (punishable by a fine not to exceed \$1,000 or a jail sentence of 90 days in jail or both such fine and jail time. Each day of violation shall be a separate offense.
- (3) Any other violation of provisions in this chapter shall be a Class A infraction as defined by the Oak Harbor Municipal Code and shall be subject to a penalty of up to \$250. Each day of continuing violation shall be a separate infraction. (Ord. 1411 § 12, 2005; Ord. 1303 § 11, 2002). (Ord. 1681 Sec. 5, 2014)

### **Section 26. Severability.**

If any part, provision or section of this Chapter is held to be void or unconstitutional, all other parts not expressly so held shall continue in full force and effect. If any section, clause, and/or phrase of this Ordinance is held invalid by a court of competent jurisdiction, such invalidity and/or unconstitutionality shall not affect the validity and/or constitutionality of any other section, clause, and/or phrase of the Ordinance.

**Section 37. This ordinance shall be in full force and effect five days from and after its passage, approval and publication as required by law.**

PASSED by the City Council this 7<sup>th</sup> day of January 2014.

CITY OF OAK HARBOR

Attest:

\_\_\_\_\_  
Scott Dudley, Mayor

\_\_\_\_\_  
~~Valerie J. Loffler~~ Anna Thompson, City Clerk

Approved as to Form:

\_\_\_\_\_  
Grant K. Weed, Interim City Attorney

Published: January 11, 2014